

2020

SCC NO. 497454

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Tremblay v. MacDonald*, 2020 NSSM 30

BETWEEN:

MICHEL RONALD TREMBLAY

CLAIMANT

and

JERRY and MISTY MACDONALD

DEFENDANTS

REASONS FOR DECISION

BEFORE: A. Robert Sampson, Q.C., Adjudicator

DATE OF HEARING: Hearing held BY CONFERENCE CALL from
Sydney, Nova Scotia on Tuesday, July 7, 2020

DECISION RENDERED: July 15, 2020

APPEARANCES:

For the Claimant: Self-Represented – Michel Tremblay

For the Defendant: Self-Represented – Misty MacDonald

Witnesses: none

BY THE COURT:

[1] This claim was commenced by Notice of Claim filed with the Court on March 16, 2020 and originally scheduled to be heard on May 13, 2020. As a result of Covid-19 and corresponding disruption in court services the matter was re-set

for hearing by way of telephone in accordance with protocols issued by the Department of Justice for the Province of Nova Scotia. The court file materials confirm that the claim included the standard Form 1 together with copies of several pieces of correspondence (including invoices) that were exchanged between the parties. The file materials further confirm the claim had been properly served upon the Defendants. A written Defence was filed by the Defendants on April 7, 2020 which included the standard form together with a one- page summary of the Defendants' position/response to the claim.

[2] This is a claim arising out of a verbal contract between the parties relating to the Claimant's provision of labour and materials associated with repairing/replacing certain parts of a deck, exterior staircase, railings and associated work to a property owned by the Defendants situate in the Village of Baddeck and used in connection with a Guest House operation. This property and business is known as "THE WORN DOORSTEP GUEST HOUSE" and had been recently purchased by the Defendants. The claimed amount is \$8130.90 represented by the Claimant as the balance owing for labour and materials arising from the contracted work performed.

[3] At the outset the court reviewed the general procedure to be employed in hearing the claim, the role of each party and how evidence was to be received including the opportunity of both parties to provide their "side of the story", that each would be afforded a chance to question the other and further that, at the end of the evidence, each would be afforded a chance to sum up their positions based on all the evidence presented. The parties were not represented by counsel. Mr. Tremblay presented his position and Mrs. MacDonald presented the Defendants' position. Mr. MacDonald acknowledged being present on the call and was

specifically asked whether he wished to provide evidence and he confirmed he did not. Also as somewhat of a preliminary matter, the court file indicated that the Defendants had wished to provide a sketch as well as have someone provide evidence on their behalf. This was raised by the court before these proceedings commenced indicating the court was prepared to adjourn the matter so as to provide the Defendants an opportunity to file/exchange any intended exhibits or arrange for any witnesses to participate. Dates for the following week as well as next month were offered and the Defendants confirmed their desire to proceed straight away. The court was then called to order and both parties were affirmed over the phone by the court and matters proceeded. Each were advised that any comments made by them at any time throughout the proceeding would be considered information given “under oath”.

[4] The court is appreciative to both parties for the organized, patient and respectful manner in which they presented their position including the documents presented to the court. The only documents referenced were those attached to each of their Claim/Defence originally filed with the court. The court verified that each party had before them a copy of all relevant documents.

[5] Based on the pleadings of the parties and accompanying documents together with the evidence received by the court, this matter can clearly be identified as a “claim” arising from a verbal contract between the parties. The evidence confirmed that each party participated in the discussions that led to the creation of a “verbal contract” whereby the Claimant agreed to carry out certain repairs/replacement in connection with an existing decking system which was attached to the main building of the Defendants’ Guest House. Where the parties part company so to speak and what has led to this dispute is in relation to certain terms of this “verbal”

contract as it relates to how labour and materials were to be charged by the Claimant and specifically whether the Defendants were properly invoiced for the materials supplied and work performed.

[6] Essentially the basis of the Claimant's claim was that he did what was requested of him and any charges were a direct result of work and materials provided directly associated with the job until completion. The Defendants' written Defence clearly acknowledges that the Claimant worked hard and the work completed was of good quality. However, they expressed concern that they were not provided a sufficient breakdown of the charges and specifically as to how they were derived. They clearly stated that the end cost, in their opinion, appeared to be higher than should have been and certainly higher than anticipated. As result of the written claim and Defence no issues existed related to the quality of workmanship or the materials supplied. The main issue squarely rests with the amount charged for labour, materials and certain items such as travel time that was included as part of the overall invoice.

CLAIMANT'S EVIDENCE

[7] The Claimant's evidence was that he had initially been contacted by the Defendants to attend at their Guest House on or about August 14th to assess some work which included hanging two doors and completing some painting. He stated that, while there, Mr. MacDonald (Jerry) asked him to look at the deck situation and asked him what he could do. He testified that it was clear there were some structural problems with both the existing decking as well as the staircase associated with the deck leading to the upper levels. He stated that he told Jerry he could repair the deck. He further testified that he had been asked for an estimate at

the outset and he openly confirmed that he could not provide one as to the scope or cost of the job because some of the deck had been covered with plywood and until he was able to view the stringers (frame) he would not be able to know what he was up against. He confirmed that he told the Defendants his hourly rate was \$35.00 and that he would only charge his actual costs associated with materials required for the job and purchased/supplied by him. They further discussed the nature of the replacement decking to be used and agreed upon using a composite material. The Claimant confirmed that the majority of his dealings and instructions received had been with Mr. MacDonald (Jerry) only.

[8] The Claimant's evidence confirmed that as he got further into the project things would come up that required repair or replacement and he discussed these issues with Jerry and would be directed to complete this extra work. He stated that he has been doing this type work for 30 years and has never had any dispute over the manner of his billings, the amount charged or the quality of his work. He stated that throughout this project, which extended to late October 2019, for the most part the Guest House remained open with guests which in turn required him to be aware at all times of miscellaneous materials being left about and any other type of potential liability to their guests. He stated that he would regularly clean up the debris from the work site and made multiple trips to the dump. He stated that he worked alone on this job which is his regular practice. He testified that the scope of work continuously expanded and included replacing deck, parts of infrastructure, parts of external staircase (3 levels), remove/repair and replace railings of stairs/deck, 284 square feet of siding on home, approximately 49 feet of the soffit. He confirmed that from August 14 to when the job was complete near the end of October he attended most every weekday and further that most days he worked (and billed) for ten hours. He stated that he also performed work at his home

associated with the job preparing required materials. He testified that his final invoice represented 30 days of labour at his quoted billable rate of \$35.00. This was based on 10 hour days and the balance was material costs associated with the job. He stated that in September he provided to the Defendants, in response to their request, an interim invoice which totaled \$10,440.00 plus tax (total \$12,211.16). This invoice included a breakdown for materials totaling \$5178.40 and the balance being for labour. He stated that this invoice led to a discussion as to how much more cost there would be and how long it would take to complete. Nothing with certainty was stated at this stage, however the Defendants had expressed concern about anticipated costs. The Claimant stated that he was not able to answer the questions being asked of him relative to what the end cost would be. However, the Claimant had indicated that with his account at Home Depot he had an interest free grace period and he would allow the Defendants to use that period to pay him for the materials. He stated that he was directed to continue and as previously noted, other issues/defects would arise— such as the need to remove, repair and replace staircase railing— and he was directed by Jerry to complete the required repairs. He stated and provided to the court a further invoice dated October 29, 2019 which contained his final project billing for \$5266.00 plus tax. This invoice together with his September 7th interim invoice totaled \$18,130.90 (including tax). He pointed out that the actual labour and material charges totaled \$15,766.00 and stated that he felt it was more than reasonable and fair for the work he had done and materials supplied.

[9] The Claimant presented a further letter he sent to the Defendants dated November 25, 2019 requesting a payment by December 14th of \$5000.00 and the balance over the ensuing four months into 2020. He further stated that if it extended beyond April, the Defendant would be required to pay interest. His letter

stated that as at November 25th he had only been paid \$5000.00 and that this amount would have only covered some of his material costs.

DEFENDANTS' EVIDENCE

[10] The Defendant, Mrs. MacDonald, provided evidence. It is worthy of note, in conjunction with her evidence, the court also reviewed her written response to the Claimant sent by letter dated December 16, 2019. In that letter she initially speaks of her unexpectedly losing her regular employment job in March 2019 and the fact that they had drained all of their personal savings purchasing the house. She referenced the fact that their daughter needed a place to stay and stated that they knew at that point (which I take to mean spring/summer 2019) that they hoped to earn enough money to pay the mortgage and operating expenses. The letter then goes on to set out the Defendants' complaint about the charges levied and asks for a detailed description of the hours worked, where the charges came from and suggests they had been overcharged. She does acknowledge in her letter the following "we know that you worked hard on this job and provided a good quality of work". She also references the fact that when they had received the September statement of \$10,000.00 (actually over \$12000 with tax) she had been left with the impression that most materials had been purchased and the costs would not be too much more. She stated that they were shocked when the final invoice totaled \$18,000.00. Again the court takes note that this amount included upwards of \$3000.00 in tax.

[11] Her testimony stated that she felt the Claimant talked too much while on site either to guests or on the phone suggesting he had been wasting time which they had been billed for. She stated that there had never been any discussion about

paying travel time or costs and this was not, in her opinion, the normal practice of contractors they had used in the past. It had been the Claimant's position that this is the standard practice and one he has applied throughout his career.

[12] She acknowledged that the required work to the deck was both a priority and necessity for them and that overall it was in bad shape and dangerous having regard to the nature of their business. Overall she stated that her main concern was the lack of detail associated with the invoices that had been provided to them. She acknowledged that through this hearing process some items had been clarified but not all. Her evidence confirmed that they were satisfied that the Claimant would have worked at least 30 days on the job and therefore were satisfied to learn from the Claimant's evidence of the number of workdays they were billed for. Her evidence confirmed that after receiving the September 7th invoice there had been no discussion or inquiry as to what made up the invoice charges or how the labour charges had been calculated.

BY THE COURT

[13] It is worthy of note that seldom in dealing with disputes of this nature is anything simply black or white. While many aspects of the evidence of both sides remains undisputed and/or confirmed by a document, clearly in the end the court is called upon to assess issues of credibility of each party not only as it relates to the actual evidence that each has presented to the court but also an assessment of their ability (or willingness at times) to recall with accuracy what may have taken place, when, where and what, if anything, may have been said.

DECISION OF COURT

[14] The court is satisfied that there was a verbal contract whereby the Defendants engaged the Claimant to perform work for their benefit. The court is satisfied that the Claimant advised of his hourly rate at the outset as well as the fact that he was simply not in a position to provide any type of estimate having regard to the nature of the work and the many unknowns associated with the project. Each parties' evidence confirmed that as the work rolled out there had in fact been many unknown problems which came to light and the scope of the project expanded greatly. I am also satisfied that the Claimant dealt primarily with the Defendant, Mr. MacDonald (Jerry), and that at most every turn, when additional work was required, he was made aware and authorized the Claimant to continue. I accept the fact that the Defendants expressed concern about the extent of the project and resulting costs but I find such concern was largely as a result of realizing the extent of the work that had to be performed once they got underway with the work. Mr. MacDonald did not testify. Therefore, I am left in large measure accepting the evidence of the Claimant as both parties did testify and confirmed that the majority of dealings the Claimant had was with Mr. MacDonald. Therefore I am left to assume that Mr. MacDonald was the one with first-hand or best knowledge of the extent of the Claimant's workday and whether there was any waste of time as Mrs. MacDonald alluded. I find there is insufficient evidence to allow me to make any finding in this regard and more directly I accept the Claimant's evidence that he worked diligently at all times and there had been no waste of time.

[15] I also accept the evidence that there was no complaint about the interim invoice rendered at the request of the Defendants on September 7th. At that point the Claimant would have been on the job site approximately three weeks. His labour costs up to that point in time were clearly set forth on his invoice at \$5440.00. There is no evidence that the Defendants were not satisfied with the

charges rendered at that point for either labour or materials. Their concern related mainly to “how much more to get job finished”. I find that the October final invoice appears to have been rendered on the same basis as the first interim invoice. However, the first concern or complaint about the manner or amount of this second invoice only arose approximately six weeks later as set forth in the Defendants’ response letter (December 16th). Further, this was after the Claimant had written to the Defendants in late November asking for payment.

[16] The court has little doubt that this repair project grew to include far more than what was expected. However, I am also satisfied from the evidence that for the most part, all of the work performed was of an essential nature and having regard to the nature of the business being operated from the property (guest house), it had to be done. Based on Mrs. MacDonald’s December 16th letter, while it expresses her concerns, clearly her honest admissions of what had occurred with their family financial situation in the spring of 2019 leaves the court with the impression that the Defendants never knew this work was required when they purchased the property and further never had the required funds to pay for this work but found themselves in a situation where they had no choice but to continue and have it completed.

[17] As for the nature of the rates charged, including travel costs, time and material costs, I find all to be reasonable and those which are normally charged by contractors of this nature working in somewhat rural areas. I further find that the Claimant appears, by all accounts, to have performed his work for the Defendant to an acceptable standard and they now enjoy the benefit of this work.

[18] The court hereby awards judgment to the Claimant for the balance of his account in the amount of \$8130.90 plus the filing fee of \$199.35. The Court confirmed that the Claimant had personally served this claim on the Defendants and therefore no costs were claimed.

DATED at Sydney, Nova Scotia this 15th day of July, 2020.

A. ROBERT SAMPSON, Q.C.

Adjudicator