

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation, *Gulliver v. Caughey*, 2022 NSSM 17**

**Date:** 20220304  
**Claim:** No. SCT 490070  
**Registry:** Truro

**Between:**

Craig Gulliver

CLAIMANT

and

Eric Caughey

DEFENDANT

**Adjudicator:** Julien S. Matte, Adjudicator

**Heard:** February 22, 2022 (via teleconference)

**Counsel:** Craig Gulliver, self represented Claimant  
Eric Caughey, self represented Defendant

**Matte, Adjudicator,**

1. This matter comes before the Court a second time after the Defendant successfully appealed a decision of this Court (*Caughey v. Gulliver* 2021 NSSC 306). In the summer of 2018, the Defendant hired the Claimant to build a carport but refused payment due to deficiencies in the work done. The Claimant acknowledges the deficiencies but claims he is owed for the work done.
2. Both parties testified at the hearing with each calling a witness. The Claimant called the roofer hired on the project and the Defendant called the carpenter hired to address the deficiencies. The parties relied on the same evidence as the initial hearing but both the witness for the Defendant and the Claimant did not have all copies of the evidence in front of them for the hearing. Both parties wished to proceed with the hearing despite the circumstances. Each party had the opportunity to question each of the witnesses. The Court offered to scan and email any of the evidence if needed during the hearing but none of the witnesses or parties requested it.
3. The parties agreed that the Claimant would build a carport for the Defendant with the Defendant paying for materials directly and the Claimant receiving an agreed upon sum for the labour. The Claimant estimated that the work would take 4-5 days in total. The Claimant testified that he agreed to a price of \$14,000 while the Defendant stated that the price was \$10-12,000.00 but that the Claimant also said that it could be \$14,000 in a manner that he believed he wasn't being serious. The agreement was never reduced to writing. In an email from November 6, 2018 the Defendant states he was given a range of \$12,000-14,000.
4. The parties agree that the Claimant was busy with another job and work did not proceed at the pace that the Defendant expected. The work began in August 2018 with the Claimant leaving the job site in October 2018. At the request of the Defendant, the Claimant used pre-cast Sono tubes for the posts that would support the carport roof. An excavator was used to dig the holes. The posts were set and staked into place. The final bolts were not put in place before

the Claimant left the job as the roof was not complete at the time. The sheathing of the gable ends was also not complete and the soffit not installed.

5. The roofer who installed the metal roof was paid directly by the Defendant and testified that the roof was not perfectly square but it was not the worst he had seen. The Claimant pointed out that the carport sat unfinished for months which would account for being a bit out of square.

6. The Defendant's carpenter's evidence was consistent. While initially questioning some of the Claimant's choices, he admitted that most of what had been done was right with one exception, the support for the beam. According to the Claimant, an inspector had told him to simply use a hanger and toe in an extra piece of lumber to ensure proper support. However, as shown in a later inspection report, that approach failed.

7. Instead the Defendant's carpenter removed the 2 gang hanger and replaced it with a 3 gang hanger while added another two by ten to complete the beam. In order to support the beam the carpenter added what appears to be seven two by fours into the wall and under the house's roof structure. The carport passed inspection. At the hearing, the Defendant testified he paid \$1700 .00 to have the problems fixed.

8. The Defendant claimed that the Sono tubes were set too low which exposed the posts to water during seasonal flooding. As a result he had to install French drains which he claims he should be compensated for. The Defendant admitted he did not advise the Claimant that his property flooded during the winter. The Claimant testified that he set the Sono tubes flush to the ground because he was under the impression that the Defendant was interested in converting the carport into a garage at a later date.

### **Findings**

9. The Court finds that the parties agreed that the Claimant would build the Defendant a carport for the fixed fee of \$14,000.00. However, given the circumstances, the Defendant agreed

to pay for the cost of materials directly. The Defendant suggested that labour would be calculated by the hour while the Defendant claims that labour would be 50% of the total price. Neither party provided any concrete evidence of the arrangement with the Defendant never requesting hourly summaries to calculate the labour costs. Given the Defendant's significant day to day involvement in the project, the Court would have expected detailed accounts of the hours worked if the agreement was based on an hourly rate.

10. The Court finds that the parties agreed to a fixed fee of \$7,000.00 for labour.

11. The Defendant claims that the work left undone is of such a magnitude that the contract should be rescinded and nothing should be owed. However, as is plain to see from the pictures, the Defendant substantially got what he contracted for, a carport. The proper remedy in this instance is damages for the deficiencies as set off from the total amount owing.

12. As noted above, the Defendant paid the roofer \$1500.00 and paid the excavator \$420.00, leaving a balance owing of \$5,080.00 from the \$7000.00 fixed fee.

13. However, as acknowledge by the Claimant and as evidenced by the carpenter hired by the Defendant, there were deficiencies left undone, mainly the supporting beam. The Claimant asks he Court to accept the sum of \$880.00 to account for the deficiencies. However, the

claimed \$1700.00 paid to the Defendant's carpenter is a better reflection of the actual deficiencies in this case and reflects all deficiencies noted.

14. No allowance is made for the French drains installed as this was not part of the project and could not have been anticipated by the Claimant in setting the Sono tubes.

15. The total of \$3,380 plus HST remains outstanding.

**Order**

16. The Court orders the Defendant to pay the Claimant the sum of \$3,887.00 plus costs before this court.

**Julien S. Matte, Adjudicator**