

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Cabinet Concepts Inc. v. Starrat*, 2022 NSSM 39

Date: 20220804

Docket: SCCH 513179

Registry: Halifax

Between:

Cabinet Concepts Inc

Claimant

(Defendant by counterclaim

-and-

Gregory Starrat and Dede Hiscock

Defendants

(Claimants by counterclaim)

REASONS FOR DECISION AND ORDER

Adjudicator: Eric K. Slone

Heard: June 9, 2022 via zoom in Halifax, Nova Scotia

Appearances: For the Claimant,
Vivian Martin, General Manager
Daryl Glenham, Sales & Design

For the Defendants, self-represented

BY THE COURT:

[1] This is a claim and counterclaim arising out of a contract to design, supply and install a custom kitchen. The matter was heard over zoom on June 9, 2022.

[2] The Claimant designs and builds custom kitchens.

[3] The Defendants are co-owners of a luxury home on the Glen Arbour Golf Course in Hammonds Plains, Nova Scotia. I believe it is fair to say that the Defendants are “discerning” clients, given that Mr. Starratt is an experienced architect (now mostly retired) who designed the home, and Ms. Hiscock is a long-standing registered Interior Designer. The Claimant would have known this and been on notice that the Defendants were prepared to pay for, and would not accept anything less than a near perfect product.

[4] The Defendants began looking for a kitchen designer in about February 2021. They visited the Claimant’s showroom and viewed some samples of their work. That satisfied the Defendants that they should proceed to do business together.

[5] A set of plans was presented by the Claimant and accepted by the Defendants. On April 24, 2021 a contract was signed that would require the Defendants to pay \$34,987.60 (including tax) for the custom cabinets, panels etc. The predominant material and overall look for approximately half the kitchen was to be quarter-sawn walnut veneer, which is a premium product that can be quite striking in appearance.

[6] I accept the Defendants’ evidence that quarter-sawn walnut veneer is not only more expensive, but is a difficult product to work with, in part because there may be slight colour variations between different lots, and because in order to achieve the desired look, there has to be a careful matching of grain where pieces line up with each other.

[7] This lawsuit was precipitated because of a balance owing under this contract of \$6,997.32, namely 20% of the contracted amount. The Defendants have been unwilling to pay because they did not accept the quality of the work and eventually discharged the Claimant with the job incomplete. The Defendants counterclaim for an amount that would more than offset the claimed amount. They say they are owed \$5,882.68 in addition to compensate them for the additional costs they will incur to have another contractor complete the project.

[8] The problem that the Defendants have with the work concerns mostly the walnut panels. There is no substantial issue with the structure of the cabinets themselves.

Factual details

[9] In setting out the following facts, I have borrowed liberally from the Defendants' written submissions, which are detailed and which I mostly accept as factually accurate.

[10] The kitchen cabinetry consists of an 11-foot long section of lower cabinets, an 8-foot long double sided island and a 22.5-foot long section of mostly 9-foot high cabinets. The Defendants selected a white PVC finish on the 11-foot section and island cabinets, and a walnut veneer finish on the long section of 9-foot high cabinets. The walnut veneer cabinetry was intended to be a focal feature as it was the most dominant surface and was visible throughout the main living areas in the open plan design. The Defendants say that they both work in a field where they specify and design with wood veneer products from time to time, and were familiar with specifying the details of the veneer. They say that they had numerous conversations with Vivian Martin, the Claimant's General Manager, to ensure that she fully understood their expectations at the time, and Ms. Martin insisted that she could provide the walnut veneer cabinets that would meet the expectations.

[11] A written contract was signed on April 26th for \$34,987.60. The Defendants provided a 50% deposit, in the amount of \$17,493.80.

[12] As explained by the Defendants, there are several criteria for specifying wood veneer. First there is the wood species. They specified walnut. As for the cut (sawing) method, they specified quarter-sliced (or quarter-cut) which produces a veneer with a straight grain and limited "cathedralling." The Defendants were told that this would be a more expensive option, and they agreed to the extra cost as this was the look they wanted in this design.

[13] The next criteria is how the sheets of veneer are placed together and the style they specified is called "book matched." Then, as the cabinet design was 9-foot high, the doors sections would have to be in two sections, as 6-foot was the maximum height that the Claimant recommended. The Defendants agreed to this but specified that the grain would have to run continuously (match) for the full height, something called "butt matching."

[14] Lastly, the quality of the veneer was specified to be premium grade, which would provide more consistency in the graining and limited variation in the colour.

[15] Ms. Martin on behalf of the Claimant agreed to all of these specifications.

[16] The Claimant ordered the raw materials, which were initially delayed but arrived on June 16, 2021. On June 24, Ms. Martin sent the Defendants photos of the panels which they had received, which showed that the panels had a lot of damage as well as what appears to be slippage of the veneers and seemed to the Defendants to be of a very poor quality. Photos showing this were in evidence.

[17] Apart from these issues, Ms. Martin advised that the 9-foot tall panels that were required for the full height sections did not arrive because of a mistake in the ordering. Only 8-foot high panels were ordered. She then suggested to the Defendants that the Claimant could splice several panels together. The Defendants said that this would not be acceptable for four locations where the full height was visible, but as a compromise they could use spliced panels for the other sections that were partially covered.

[18] One consequence of this was that new 9-foot panels would have to be ordered, that would match the panels fashioned from the 8-foot sections. I accept the Defendants' assessment that, in retrospect, this failure to order 9-foot panels initially was the mistake to which most of the problems can be traced

¹This I understand to be an effect where the grain resembles a cathedral window, which is not necessarily desirable for every application.

[19] The Defendants also noted in an email on June 24 that in the photos she had sent, the walnut veneer appears considerably lighter than the sample she had shown the Defendants in her showroom on February 9. The Claimant suggested they would provide the Defendants with a lacquered sample of the walnut so that they could confirm the colour was acceptable. Ms. Martin had this sample prepared and the Defendants reviewed and accepted it as the standard for the walnut veneer finish and colour in an email dated June 29.

[20] On June 25 the Defendants received another email from Ms. Martin with photos of other walnut panels that the Claimant had available in its inventory and she requested that the Defendants call her to discuss. The Defendants reviewed these photos and realized the panels were another style of slicing (flat slicing), which they had stated previously that they did not want, and responded that these panels would not be suitable.

[21] The cabinets arrived on site on July 15th and were installed over the 16th and 17th. Ms. Martin informed the Defendants that two of the full height panels would be missing as her delivery (of the 9-foot pieces) had not arrived, and also the alcove box would not be installed as dimensions were required after the surrounding cabinets were installed. At this point she requested another payment of 40% of the contract amount. The Defendants were unwilling to pay this much but compromised on paying a further 30% of the contract amount, \$10,496.28.

[22] At the completion of this installation, there were numerous deficiencies, most related to the walnut sections. The Claimants' installers made a list of these deficiencies. Along with the missing panels, drawer and door pulls were not installed as the drawer faces were not properly prepared to accept the pulls, the opening for the built-in wall oven was the wrong size and the dishwasher panel was the wrong size. For the walnut veneer, the 9-foot high sections for the doors did not have the full height continuous vertical grain (butt matched) and several sections appeared to be of a lower quality as the graining was quite inconsistent.

[23] Ms. Martin agreed to come to the site to review the installation and the deficiencies. The parties spent time trying to work out how best to reuse some of

the panels in other locations, such as using the tall panels cut down to replace the smaller, poor quality veneer drawer fronts. The meeting appeared to go well and Ms. Martin agreed to have all issues remediated.

[24] On August 27th the Claimant returned to address the deficiencies, which included installing the 9-foot panels. However, there were problems both with the colour and matching of the vertical grain. This shows up well in the photos.

[25] Some of the deficiencies were addressed by the Claimant on September 24th, and the Defendants then requested a meeting with Ms. Martin to try to resolve the outstanding items. The parties met on October 5th and Ms. Martin undertook to resolve all issues in a timely manner.

[26] One of the main outstanding issues was the colour and continuous vertical grain of the four sections of 9 foot high panels.

[27] The Claimant had the Defendants approve a sample to try and achieve a colour match. On October 19, Ms. Martin advised the Defendants that new panels had been ordered and would arrive in a week. The Defendants followed up and on October 31, suggesting that due to the issues with the last two rounds of panels installed, that the Claimant send photos for a review prior to cutting or lacquering. This was to ensure that the panels were of a suitable quality and adhered to the specifications (quarter sliced and book matched). The Defendants also suggested that the panels be marked out for the door sizes so they could confirm that the 9-foot high door panels would be butt matched. The purpose of this request was help avoid some of the previous issues, before the panels were cut or lacquered.

[28] It was not until November 16th (after prodding) that the Claimant sent photos of the full size panels, which photos were in evidence. The veneer on these panels is flat sliced (not quarter sliced as specified), they appear to be a random match (not book matched as specified), and have wide stripes of yellow graining, which is not consistent with the panels that were already installed. Essentially, these panels were of a cheaper and different grade than specified.

[29] The Defendants rejected these panels, based on the photos, and Ms. Martin advised them on November 19th that she had reordered the panels and they would arrive in 10 days.

[30] The next update was on December 2nd. The Defendants were advised that the new panels had arrived and they would schedule to install later the following week. On December 14th Ms. Martin provided the Defendants with photos of the

new panels (not lacquered) that had arrived. The Defendants responded that the quality of the veneer looked much better, but did not comment on the colour as they had not been lacquered.

[31] On December 17th Ms. Martin requested that the Defendants supply a definitive list of outstanding items. By email dated December 20th, the Defendants set out the following:

1. 1B & 1C - Replace both doors (walnut). Colour to match original sample. End match doors (vertical grain).
Refrigerator door panel will be installed by others.
2. 2A & 2B - Replace both doors (walnut). Colour to match original sample. End match doors (vertical grain).
3. 3A & 3B - Replace both doors (walnut). Colour to match original sample. End match doors (vertical grain).
4. Dishwasher - Replace door panel (white) and provide base (white).
5. Island . Install push-to-open latch on 4 doors.

[32] The Claimant was on site on December 21 to complete all items on this list. For items #1, #2 and #3, they did deliver and install all panels (except the refrigerator door panel). However, although the grains were correct, the colour was still quite different than all of the other cabinets. A representative of the Claimant was there to supervise the installers, and he agreed that the veneer doors still did not match the surroundings cabinets, and was not acceptable.

[33] Item #5 of the deficiency list was completed. For item #4, the Claimant did deliver a dishwasher panel, but the Defendants were required to arrange to have their own appliance supplier install this. When the Claimant provided the refrigerator and dishwasher panels, they were also to provide the matching bases.

However, they did not provide the bases and they wrongly stated that these appliances could not be installed with bases.

[34] In January the Claimant returned to install the new dishwasher panel, only to discover that it was a Shaker-style rather than flat to match the other white cabinet doors.

[35] There was also a problem with the installation of the dishwasher panel, which was poorly fitted leaving an unsightly gap.

[36] At this point the Defendants stopped dealing with the Claimant and began to seek an alternative supplier for the walnut panels. As at the time of the hearing the work had not yet been done. The home is occupied but most of the kitchen is not usable. The Defendants do not have a firm quote in hand, as prices may change by the time they settle on an alternate supplier.

The Claimant's position

[37] The Claimant's position is that the Defendants improperly rejected panels supplied, and that the contract does not allow them to reject work based on their subjective opinion. They say that the Defendants were rude (at times) and hard to deal with. The Claimant contends that the Defendants had no justification to end the contract and deny them (the Claimant) the right to correct their work.

Discussion

[38] When a contractual relationship breaks down, there typically comes a time when it can fairly be said that the contract has been breached and it is no longer feasible or productive for the parties to continue to work together. I believe that after six months of trying to get their kitchen finished, the Defendants had a right to call the contract at an end.

[39] I accept the Defendants' position that this was a contract for a premium product and they had every expectation of having an end product that met that standard.

[40] A litmus test for me is this: I believe that if the Claimant were asked whether they would showcase their work on this kitchen as something fairly representative of what they do, if being candid, they would say "no." It is not a project of which they can be proud. I expect that there are some legitimate reasons for why this project went off the rails, such as supply chain problems, but in the

end they must deliver what they promised.

[41] Not only did they mess up the original order, but they repeatedly attempted to get the Defendants to accept inferior material offered to remedy the original problems. In that respect, they demonstrated a lack of skill or diligence and breached their contractual obligations.

[42] I believe the Defendants are entitled to the benefit of the bargain they made when they signed their initial contract with the Claimant.

Measure of damages

[43] The evidence in support of the counterclaim was fairly thin. There is no written quotation from any alternate supplier.

[44] The Defendants provided a suggested “budget” for the work, which totals \$12,880.00 (including HST). The components of this budget are:

Cost to supply replacement walnut panels	\$7,500.00
Cost to remove existing panels and install new panels	\$2,400.00
Cost to remove existing refrigerator door panel and dishwasher panel and install new	\$600.00

Cost to supply new PVC dishwasher panel and base	\$200.00
Site cleanup and waste disposal	\$500.00
subtotal	\$11,200.00
HST	\$1,680.00
TOTAL	\$12,880.00

[45] Giving credit for the balance of the contract with the Claimant, the Defendants arrive at a net counterclaim of \$5,882.68.

[46] The lack of solid evidence to support this budget is far from ideal, though the Claimant did not make any specific arguments to challenge it. Essentially it is based on the Defendants' knowledge and experience. If I accept their evidence as credible, then I may accept this estimate as the best evidence available.

[47] On the face of it, I do not see anything in this budget that stands out as unreasonable.

[48] I am accordingly allowing the counterclaim in the amount requested.

ORDER

[49] In the result, the claim is dismissed and the counterclaim is allowed in the amount of \$5,882.68, plus the counterclaim filing fee of \$66.00 for a net judgment in favour of the Defendants (claimants by counterclaim) of \$5,948.68.

Eric K. Slone, Adjudicator