

**SMALL CLAIMS COURT OF NOVA SCOTIA**

**Citation:** *Blois v. Butcher*, 2023 NSSM 26

**Date:** 20230609

**Docket:** SCT 491866

**Registry:** Truro

**Between:**

Steven Blois

*Claimant*

v.

John Butcher

*Defendant*

**Reasons for Decision and Order**

**Adjudicator:** Julien S. Matte

**Heard:** April 19, 2023 in Truro, Nova Scotia

**Appearance:** For the Claimant, self-represented  
For the Defendant, Peter R. Lederman, K.C.

**By the Court:**

[1] While the parties have known each other since childhood, things soured quickly after the Claimant hired the Defendant to help build his home. The Claimant asks this Court to order the Defendant to return money paid for excess wages, deficiencies in the work done, the cost of finishing the project and the return of funds with respect to a cancelled home warranty policy. The Defendant denies the claim and seeks payment of an invoice left unpaid.

[2] At the hearing, the Claimant testified that in late 2016 he entered into an agreement with the Defendant to build him a house for the sum of \$40,000.00 with weekly payments at the rate of \$45/hr and \$15hr for a helper. In order to protect his investment, the Claimant gave the Defendant \$1,656 to purchase a new home warranty and soon after a \$5000 deposit required by the new home warranty insurer with the understanding that the amounts would be paid to the insurer and the deposit returned once the new home was complete.

[3] After building the driveway, the Claimant testified that he intended to hire another contractor to put in the foundation, but the Defendant convinced him that he could do it. As was the agreement, the Claimant paid for all the materials including the lumber used for the concrete forms at a cost of approximately

\$750.00. After the foundation was done, the lumber used for the forms was taken by the Defendant. These facts are not in dispute.

[4] Between June and September 2017, the Defendant provided weekly invoices outlining the hours worked. The bills were paid, and receipts issued. There were no problems until September when the last three invoices reflected a higher rate than previously agreed. When the Claimant noticed the increased wage, he refused to pay the last invoice and the Defendant threatened to quit. The last invoice represents the Defendant's counterclaim and includes a claim for use of the Defendant's generator, staging and a metal break.

[5] The Claimant says that the Defendant also stole an entire lift of lumber from the site in addition to taking the forms for the concrete foundation but had no receipt or precise information on what was taken. Further, the Claimant says that there were deficiencies in the construction that had to be addressed including the dormer placement, vapour barrier not taped at the seams, grading of garage floor, the trusses installation and three headers that were not properly built.

[6] The Claimant also complained to the police that he had been defrauded of his home warranty funds and theft of materials by the Claimant. The officer who investigated testified at the hearing that in his opinion there were grounds to lay a

criminal charge. However, he noted that the Crown prosecutor at the time declined to proceed as she felt it was more properly a civil matter.

[7] The Defendant stated that during a discussion with the Claimant he agreed to assist in building the Claimant's house at the rate of \$45 per hour for him and \$15 per hour for his helper. The rate included the use of his tools. The Claimant was to provide all material and hire any required trades. The Claimant acknowledges receipt of the home warranty fee and deposit but explained that since there was a delay in starting construction and that the warranty was in his name, he decided to cash out the policy. He further explained that he kept the money as a charge against future work.

[8] Defendant denies the deficiencies with the vapour barrier and notes any problems with the garage floor had nothing to do with him as it was done by another tradesperson. He agrees that the dormer was moved but that the work only took a couple of hours as was the case with the headers. The Defendant states that the building inspector found no fault with the construction. As for taking the lumber used for forms, he agrees that he did but that much of it was not usable. He denies taking a lift of lumber as alleged.

[9] The Defendant explains that he increased the hourly rate from \$45 per hour to \$52 per hour to compensate him for the use of his staging and generator.

### **Findings**

[10] The Court finds that the parties entered into a contract for labour from the Defendant at the rate of \$45 per hour and \$15 per hour for a helper. Invoices for the time worked were submitted weekly and payable on receipt. The sum of \$40,000 represented a budget not a fixed amount for completion of the project.

The Defendant's unilateral increase of the rate to \$52 per hour was never agreed to by the Claimant. The Defendant's explanation that the increase was to cover costs of the use of staging and a generator is contradicted by the last bill issued by the Defendant which includes \$2350 for use of staging, generator and metal break.

The Court finds that regardless of the explanation, the Defendant was not entitled to increase his hourly rate from \$45 to \$52 an hour without obtaining agreement from the Claimant. Therefore, the sum of \$514.50 for the refund of the increase from September 11 to 22 is allowed. The claimed amount for Sept 25-29 is dealt with in the Court's analysis of the Defendant's Counterclaim below.

[11] With respect to the \$2,350 claimed for the use of his generator, staging and metal break, the Defendant testified that in his opinion these items did not fall

within the agreed contract of use of his tools to complete the work. However, the issue was never raised with the Claimant. Up until the last week of September, no charges were noted on any bill for the use of these items. In fact the last bill was amended to add these charges. Neither party testified that there was a discussion about charges with respect to these items. As this forms part of the Defendant's counterclaim, the burden falls on him to prove an agreement with respect to these items. The Court finds that on a balance of probabilities, there was no agreement explicit or implied for charges to be incurred for the use of these tools.

[12] Conversely, it is the Claimant's burden to prove his claims with respect to deficiencies and the costs associated with finishing the project. The parties agree that the dormer had to move to match the plans and that three headers had to be fixed to meet requirements. The Defendant charged his time at the rate of \$45 per hour to address these issues. The Defendant says it only took two hours to fix the dormer while the Claimant says it took 8-16 hours. No evidence was provided on how long it would have taken to fix the headers. The Court finds based on the parties evidence and pictures provided of the dormer that the mistakes made in the construction allows a claim of \$450.00 representing a refund for extra charges incurred by the Claimant.

[13] The Claimant says that the vapour barrier was not properly taped at the seams and the siding had to be removed and reinstalled, costing him an additional \$3,240 based on an additional 72 hours of work needed to remove and replace the siding. The Claimant relies on pictures of the siding to show missing tape. The Defendant states that everything was installed properly, and the seams were taped as required and relies on a picture showing the vapour barrier covering the entire wall. The Defendant further states that the Claimant was away the entire time that the siding was installed.

[14] The Court finds that on a balance of probabilities additional work had to be done to rectify the issue of the inadequate vapour barrier. Given the entirety of the evidence including the Defendant's explanation for cancelling the home warranty, on a balance of probabilities, the Court finds the evidence of the Claimant more credible than that of the Defendant's. The Court's assessment of damages on this issue is dealt with below with the Defendant's Counterclaim.

[15] The claim for compensation for the garage floor grading is dismissed. There was insufficient evidence presented to prove beyond a reasonable doubt that the Defendant was responsible for grading the garage floor.

[16] The claim for reimbursement of the warranty cost and deposit is allowed. The Defendant's explanation for cancelling the home warranty is without any credibility. His actions have deprived the Claimant of the benefits of a new home warranty and cannot be rationally explained beyond an unwarranted entitlement to the Claimant's funds. Whether his actions were criminal in nature, as the investigating officer believed, is not a question for this Court. However, the claim of \$6,656 is allowed without hesitation.

[17] With respect to the lumber used for the forms, the Defendant admits to taking the lumber but says that much of it was unusable. With respect to additional lumber taken from the site, the Claimant did not provide receipt and was unsure what may have been taken. Notes from an interview in the criminal investigation by the now deceased helper suggests that the Defendants did take lumber while a printed copy of a text message signed by the deceased and tendered by the Defendant indicates that the Defendant had not stolen any material. The Court prefers the notes of the officer taken in the course of his duties and investigation into the alleged fraud and theft by the Defendant. Given that there was no agreement between the parties for the use of the forms and based on the evidence the Court allows the claim of \$1,296.32 for lumber taken by the Defendant.



[18] Finally, the Claimant asks the court to award the costs involved in finishing the project after the Defendant left. As found above, the agreement between the parties was for labour paid at an hourly wage. There was no agreement for a fixed fee completion of the project. As a result, the Defendant was only responsible for completing work that he was paid to do. The claim for the cost of finishing the project is dismissed.

[19] The Court finds that the Defendant owes the following amounts to the Claimant:

|     |  |                   |
|-----|--|-------------------|
| (a) | Reimbursement for increased rate:                | \$514.50          |
| (b) | Reimbursement for cost to fix dormer and headers | \$450.00          |
| (c) | Reimbursement of warranty cost and deposit :     | \$6,656.00        |
| (d) | Reimbursement for lumber taken:                  | \$1,296.32        |
|     | <b>Total:</b>                                    | <b>\$8,916.82</b> |

[20] Given the high-handed conduct of the Defendant, the Claimant is entitled to general damages of \$100, interest and costs. Interest is calculated in accordance with s.16 of the *Regulations* at 4% from the date the home warranty funds were returned to the Defendant by the insurer. The amount is calculated at \$2,110.31.

Costs of \$199.35 for the filing fee is follows the event and is awarded to the Claimant.

### **Counterclaim**

[21] Based on the above and the evidence tendered that the last bill as re-issued and tendered as exhibit H, the Defendant claims \$4,600.00 which remains unpaid. The bill is made up of a claim for 41.5 hours of labour performed between September 25-29, 2017, plus \$92 in materials and \$2,350 in charges for use of the Defendant's equipment.

[22] Given the Court's findings with respect to deficiencies of the siding installation, the Court finds that any amount owing for labour is set off by the claim for deficiency in the installation of the siding. The claim for rental amounts for equipment is dismissed for the reasons set out above. The claim for the increased rate is subsumed in the set-off for deficiencies. As a result the counterclaim is allowed in part, \$92.00 for materials.

### **Order**

[23] The Claim is allowed in part in the amount of \$11,326.48. The Counterclaim is allowed in part in the amount of \$92.00

[24] The Court orders the Defendant to pay the Claimant the sum of \$11,234.48.

Julian S. Matte, Adjudicator