

SMALL CLAIMS COURT OF NOVA SCOTIA

Wright v. Zwicker, 2023 NSSM 77

Date: 202301031

Docket: 523019

Registry: Truro

Between:

Christopher Wright cob as Wright Brothers Piping

Claimant

v.

Jeremy Zwicker

Defendant

Adjudicator: Julien S. Matte

Heard: October 16, 2023 (via teleconference)

Appearances: Christopher Wright, self-represented for the Claimant
Eryn L. Heidel, Counsel for the Defendant

By the Court:

[1] The Claimant seeks payment of an outstanding invoice for the supply of three heat pumps for a building owned by the Defendant. The parties agree that the Defendant gave a \$15,000 deposit towards the cost of materials and labour for heat pumps that were ultimately installed by other installers. The Claimant says that after his two employees quit just prior to the intended installation, he quickly found replacement installers. However, the Defendant refused to move forward with the Claimant's new employees as they were part of a union. The parties attempted to settle matters between them without success. Each claims the other breached their contract and asks for the Court to order the other to pay damages.

Contract

[2] In early December 2022, the Claimant sent the Defendant an initial bid for the requested heat pump conversion. Through discussions, the final and accepted contract was agreed to on December 22, 2022, as evidenced by text messages tendered and an initial deposit of \$3,000 paid by the Defendant. The first date of installation was suggested by the Claimant as February 20, 2023, weather permitting. The installation did not go ahead at the time with the next projected date of March 13, 2023, again weather permitting.

[3] On March 20, 2023 two employees of the Claimant arrived at the property to begin the installation but the Claimant was delayed and the required equipment was not on site. As it turns out, the two employees left and gave notice that they were quitting the very next day. The parties agree that shortly after his employees quit, the Claimant advised that he could continue the job using union labour. The Defendant did not want to have unionized employees on his property expressing a belief that unionized workers were not as efficient as non-unionized workers. As a result, the parties attempted to negotiate the termination of the contract between them. The Defendant admitted that shortly after, he hired the Claimant's former employees who had started a new company after quitting their jobs with the Claimant.

Breach

[4] The Claimant says that the Defendant breached their agreement when he failed to allow the agreement to continue with two new unionized employees. The Defendant says that the Claimant breached the agreement when he failed to install the heat pumps as required under the contract due to delays and a lack of equipment on site.

[5] Despite the apparent delays due to weather conditions, the Defendants testimony reflected that he was not concerned about delays until March 2023. Further it was not until the Claimant's employees quit that the Defendant raised any issues with continuing the project with the Claimant. Most of the text conversations between the parties appeared cordial and friendly with the Defendant having invited the Claimant to his birthday party.

[6] With respect to the equipment picked up and paid for by the Defendant, the evidence demonstrates that the Defendant paid for the air handler unit as he did not want to incur the additional cost of a courier. The Claimant acknowledged that the Defendant, of his own accord, picked up the unit and paid for it on April 5, 2023 after it became available at the supplier.

[7] The Court finds that soon after his employees quit, the Claimant offered to continue with unionized employees. As it turns out, the air handler unit was on backorder until early April making completion of the full installation impossible until that time. Given that the Claimant was able to find new installers before the equipment was ready, there was no prejudice to the Defendant or breach of the contract by the Claimant. The Contract sets out the terms for installation of heat pumps and makes no representation as to whether the installers are part of a union or not. The Defendant's prejudice against unionized employees is a personal

preference not an enforceable term of the contract. The Defendant's admission that he soon hired the Claimant's employees suggests that the employees were enticed to leave their jobs. However, without more evidence such a finding would be speculative and is not needed to support a conclusion that the Defendant breached the contract when he refused to continue with the installation as per the terms of the contract.

Damages

[8] The Defendant testified that he obtained the invoices from the supplier for the equipment that the Claimant ordered on his behalf. While it is surprising that the supplier shared their customers' invoices with a third party, the Defendant's position on damages is equally novel. The Defendant claims that he is entitled to benefit from the Claimant's supplier's "cost" prices and therefore advocates that the cost of equipment he received should be what the Claimant paid rather than the prices found in the contract. The Court finds that the prices noted in the contract are the prices agreed between the parties. There is no clause in the contract that contemplates otherwise, nor would such a clause ever be agreed to by a tradesperson who relies on the supply of goods to make a living.

[9] The Claimant set out a detailed spreadsheet accounting for the damages claimed. Each contracted item is added then removed if not performed. The

spreadsheet detailed the price, quantity plus tax of each item provided. The Claimant removed the labour costs and then added any labour for site visits.

[10] After taking into account the air handler unit paid for by the Defendant and the Defendant's deposit of \$15,000.00 the balanced claimed by the Claimant is \$722.12

[11] In addition to this amount the Claimant claims the difference between the profit he would have earned on the labour provided and the profit actually realized. During the hearing, the Claimant agreed that, there was a small error in calculation which changed the "unrealized profit due to breach" from a claimed \$1,815.52 to \$1,329.17. In the circumstances, the Defendant is the author of his own misfortune when he refused to have unionized labour perform the work thereby causing the claimed loss. The claim for lost profits of \$1,329.17 is allowed.

[12] The Claimant also requests \$1,922.61 under the heading "Damages due to Breach of Contract". During the hearing, the Claimant could not show where this figure came from. The Claimant said it was an amount to recognize the harm done by the breach of contract. This is a claim for general damages. The Court awards the maximum \$100.

[13] Costs of \$ 349.65 are awarded for court and service fees. The requested legal fees are not a permissible disbursement under the *Act* and *Regulations*.

[14] The Claim is allowed in part. The Counterclaim is dismissed. The Defendant is ordered to pay the Claimant \$2,500.94

Julien S. Matte, Small Claims Court Adjudicator