

SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: *Debaie v. Milson*, 2023 NSSM 96

Date: 20231122
Docket: 518427
Registry: Halifax

Between:

Dennis Debaie

Claimant

v.

Tracy Milsom

Defendant

Adjudicator: Eric K. Slone

Heard: October 20, 2023

Counsel: Claimant – self-represented
Defendant – self-represented

By the Court:

Introduction

[1] This case involves a claim and counterclaim arising out of a renovation project. The Claimant, Dennis DeBaie, seeks payment of approximately \$10,000.00 for an unpaid invoice. The Defendant, Tracy Milsom, counterclaims for significant damages (more than \$40,000.00) that would offset this invoice and go on to reach or exceed the court's monetary jurisdiction.

[2] The hearing proceeded over Zoom on October 20, 2023. Each of the parties testified on their own behalf. No other witnesses were called.

[3] Mr. DeBaie provided a few documents, none of which was all that helpful to his case. Ms. Milsom provided a much more substantial package of documents as well as a written summary of her position.

[4] To save everyone from flipping to the bottom of this decision to see the result, I will reveal that the claim has been wholly unsuccessful, while the counterclaim has been entirely successful.

The facts

[5] Mr. DeBaie is the sole proprietor of a contracting business in Muquodoboit Harbour, Nova Scotia, using the unregistered name of Custom Building Insulators. Mr. DeBaie's formal credentials include a red seal designation as an insulator, and a "bricklayer ticket." Neither of these specialties had any application to the project at hand, which was to renovate and enlarge a garage on the Defendant's property. Mr. DeBaie also described himself as a "jack of all trades."

[6] Ms. Milsom planned to renovate a garage on her parents' property in Muquodoboit Harbour, to transform it into a rental apartment.

[7] Mr. DeBaie was already acquainted with Ms. Milsom's mother, through community connections.

[8] I believe it is fair to say that Ms. Milsom was inexperienced in matters of construction and renovation, and she placed her trust implicitly in Mr. DeBaie who claimed the experience and credentials to do the job.

[9] The earliest discussions took place in March 2022. The project was discussed, and Ms. Milsom asked for a rough quote. Mr. DeBaie

quoted \$90,000.00. Ms. Milsom knew enough to anticipate that the project might go over budget, and told Mr. DeBaie that she could only afford to go as high as \$110,000.00 to \$120,000.00. I find that she made it clear that the budget and a reasonable timeline were critical to her, and Mr. DeBaie agreed to meet those requirements.

[10] Unfortunately, the agreement was never reduced to writing. Such a contract might have made clear what was expected of each party. Ms. Milsom can be forgiven for her naivety. Mr. DeBaie should have known better.

[11] I find that Mr. DeBaie knew, or ought to have known, that various permits would be required for a project of this magnitude in order for the building to be occupied, and even more so if it were to be offered as rental accommodation. This would have included a building permit and eventually an occupancy permit. I also find that Mr. DeBaie knew, or ought to have known, that in order to pass the various inspections that are part of the permit process, the work would have to be compliant with the requirements of the Building Code.

[12] While Mr. DeBaie was working on the project, he would ask Ms. Milsom for infusions of money, which she would provide. These requests typically did

not include any details of where the money was being allocated, whether to pay for materials, subcontractors or to Mr. DeBaie himself. After a while, Ms. Milsom began to ask for an accounting of where her money was going, but such an accounting never materialized. Other events began to frustrate her. There were lengthy delays, perhaps the worst of which was an 8- or 9-week delay waiting for a particular bathtub to be delivered. During that time Mr. DeBaie seemingly disappeared, when he very likely could have been working on other aspects of the project.

[13] There are no good records of what Mr. DeBaie received before he was displaced from the project, but it appears to have been about \$40,000.00.

[14] The sense of frustration that Ms. Milsom experienced is well described in her meticulously prepared PowerPoint document. This is how she described the overall trajectory of the project:

Dennis began work on the renovation in March, 2022 and was fired from the job and asked to leave the property on Oct 5th, 2022. The final straw was getting an invoice from a tile contractor for 60% more than what Dennis estimated (tub surround and bathroom floor). In speaking to the tile contractor, he advised that he never gave a quote in any amount to Dennis- that it was time only (see text from Emlyn – Tile Contractor). The entire project was headed for 55% or more over the “budget” provided by Dennis Debaie. A second contractor (electrical) also stated

that Dennis did not ask for a quote for his work. Dennis was behind on the timeline by months. Failed to communicate about many decisions made. Failed to return calls and texts on a consistent basis. Failed to provide a full written estimate. Failed to provide receipts for materials. Failed to be on site to monitor work being done by subcontractors. Made error after error until I finally said enough. He misrepresented himself as to his abilities. He failed to provide the proper duty of care with respect to both the quality of work, adherence to current building codes, permits and budget.

[15] I accept that Mr. DeBaie failed to perform his side of the contract on a reasonable basis, and Ms. Milsom was justified in terminating the contract.

[16] The following (in no particular order of seriousness), and borrowing freely from Ms. Milsom's document, are the specifics of errors made that have cost, and will cost Ms. Milsom significant moneys to rectify.

Second Story Flooring

Floating laminate floor installed without foam underlay. Without foam the warranty is void. Floor had to be completely taken up and reinstalled. When the floor was taken apart there was debris underneath

[17] The cost to rectify this problem will be shown below.

Electrical

New electrical panel was moved twice. Dennis Debaie forgot about the fact a kitchen had been designed and purchased before he decided on

where to put the new, upgraded electrical panel. The cabinets could not be installed over the panel, so it had to be moved.

[18] The cost to rectify this problem will be shown below.

Hardwood Staircase

The existing staircase was moved to accommodate a better upstairs layout (as advised by Mr Debaie). When you move a staircase, the stairs are no longer considered grandfathered. New staircase stringers built by Dennis Debaie were not built to code. Stair treads too short and rise too high. Will not pass inspection. Dennis was told by MR Stairs (installers) when the stairs were being measured that they were not built to code. Instead of telling me the homeowner, or fixing his error, he advised the stair installers that I would not be having an inspection done. This is utterly false (text from myself re inspections and receipts attached as evidence). I require an occupancy permit in order to rent the building as well as meet mortgage requirements.

[19] This was a serious and costly error by Mr. DeBaie. It also revealed his clear misconception about the need for code compliance, which inevitably involved inspections.

[20] His statement to the stair installers that Ms. Milsom would not be having an inspection done was both wrong and misguided. First of all, the question of whether or not there was to be an inspection was not Ms. Milsom's to answer. Either an inspection was required, or it was not. And Mr. DeBaie was the person who should have known that inspections were needed.

[21] The cost to rectify this problem will be shown below.

Kitchen Cabinetry

Dennis Debaie decided to move my staircase between the main and second floors. He did so after a kitchen had been designed, ordered, and paid for. He was supplied with the kitchen layout (see email as evidence). He failed to leave enough room for the kitchen island. As a result, I was unable to use two cabinets. He also cut my fridge panels incorrectly. He was given the dimension of my fridge ahead of time and did not install the panels nor the upper cabinet correctly. Those panels had to be replaced and I paid for additional labour for installation.

[22] The cost to rectify this problem will be shown below.

Mudroom and Utility Room Addition

[23] The evidence discloses a number of deficiencies, as described by Ms. Milsom, the most serious of which were (in my opinion) cutting down, or notching the floor joists in order to compensate for the fact that he created the ICF foundation three inches higher than the existing foundation which it had to line up with.

[24] It is notable that Mr. DeBaie chose to use ICF without first discussing it with Ms. Milsom. Ms. Milsom testified that she expected a conventional foundation. It is questionable whether Mr. DeBaie had the necessary credentials to work with ICF. The foundation came out 3 inches taller than the

existing foundation sill, which created the problem with the floor joists.

Water problem under foundation

Dennis created a water problem when he dug this foundation and did not remedy it before laying a floor over top, erecting walls and a roof etc. The proper method would be to fill the void with gravel and pour a concrete floor BEFORE erecting walls and a roof. This was not done. Had he planned on doing so he wouldn't have filled the void with garbage and put a floor down over top.

Water issues in foundation void. Mudroom floor was built over the top. Void was filled with miscellaneous garbage that rotted and went moldy in over a foot of stagnant water. Had to be professionally removed. Floor had to be torn out. Water Softener and hot water tank had to be relocated to my living room .

[25] The cost to rectify this problem will be shown below.

Improper framing and trusses

[26] The framing is not sitting on the foundation properly, because of the discrepancy in heights between the ICF and the existing foundation.

[27] The roof trusses and walls also do not meet code, as will be further discussed below.

[28] It has been recommended to Ms. Milsom that the entire structure be torn down and rebuilt.

Permits and Code

[29] As mentioned, Mr. DeBaie assumed wrongly that this project could be done without a building permit, and without strict compliance with the Building Code. It is well-known that permits, and everything that they imply, are necessary for anything but the most trivial of renovations.

[30] Mr. DeBaie appeared to understand that an electrical permit was required, which system is operated by Nova Scotia Power and not by the Municipality.

[31] Mr. DeBaie's failure to get started on the right foot with a building permit has left Ms. Milsom stranded with a half-finished project that in many respects does not meet Code.

I am unable to acquire an occupancy permit without proper inspections. Without an occupancy permit I can't pull my equity back out of the property and am stuck living in it as opposed to renting it as planned. The mortgage lenders require an occupancy permit in order to underwrite the mortgage for a secondary suite. I was clear that I felt I may need permits but not being a contractor didn't know which ones were necessary other than electrical and occupancy. Dennis told me I didn't require more as the building was existing. I am NOT a contractor and relied on his expertise in this area. This turned out to be incorrect and may cost me significant amounts of money and prevent me from renting the space as intended. The financial consequences are significant.

[32] Ms. Milsom provided an engineering report by Cogswell Engineering Ltd. to document all of the deficiencies and code non-compliance. I am setting it out here (mostly) in full:

Cogswell Engineering Ltd. was retained by the homeowner to review a building located at the above-named address to evaluate code conformance and structural adequacy of the building in question. Visual reviews through non-invasive techniques were carried out on May 24, 2023.

The building is an existing accessory structure converted into a secondary suite. This is considered a change of use for the building in question and therefor the building has been placed under Part 9 of the National Building Code of Canada for a secondary suite. The current edition of the National Building Code of Canada (NBCC 2015) was referenced for the review.

Building Code Deficiencies:

During the site visit several building code deficiencies were discovered:

- 1) Wired smoke alarms or carbon monoxide detectors were not present in the building.
- 2) Bathroom exhaust fan on the second level was not ducted to the exterior of the building.
- 3) Interior stairs' rise exceeded maximum code requirement by 0.75"
- 4) Interior stairs' handrail was not continuous.
- 5) No attic hatch was present in building.
- 6) No roof venting was in place.
- 7) Doors did not conform to accessibility requirements of minimum 36" wide opening (Section 3.8).
- 8) Electrical panel was exposed, enclosure required due to location.
- 9) Heat recover ventilator(s) (HRV) was not present.
- 10) Wall assemblies for rear addition did not meet code minimum R-

value requirements.

Structural Deficiencies:

The existing structure plus new rear addition were reviewed for structural integrity and the following was discovered:

- 1) Existing second floor system was not reviewed by a structural engineer prior to the renovation construction for the design loads prescribed in Part 9.4 of the NBCC for the change of use.
- 2) Roof and exterior walls of new rear addition are not structurally adequate. Roof rafters and ceiling joists are undersized as per NBCC and considered over capacity.
- 3) Exterior walls of new rear addition are not adequately bearing on the foundation walls and are structurally unsafe in their current state.

Disclosures:

- 1) Cogswell Engineering Ltd. does not take responsibility for any past orders or requirements that may have been issued to the property or building by any government authority or regulatory body.
- 2) The assessment is in compliance with the requirements of the National Building Code of Canada and applicable standards.
- 3) Where required, instructions for safe removal, disassembly, and new construction affecting the existing structure can be provided by Cogswell Engineering Ltd. by request. Considering how the previous work could alter loads or stresses in any part of the building, contravene the applicable building code(s) and standards, the health and safety of any persons using, working on, or having access to the building and its infrastructure.

Conclusion:

In conclusion, the renovation work completed for the change of use for the building in question contravenes the requirements set out in Part 9 of the NBCC. It is required that the deficiencies noted above be corrected in compliance with the National Building Code of Canada and the Nova Scotia Building Code. It is also required that the structural members noted above shall be inspected by a structural engineer and corrected as necessary to deem the building safe for human occupancy.

[33] The sheer number and seriousness of Mr. DeBaie's errors is mystifying. He presented no substantive answer to the claims, other than to say that it was all fixable.

[34] Some of the deficiencies have been addressed, and others are in abeyance pending this court case.

[35] Ms. Milsom's summary of her counterclaim includes the following:

Addition Demolition and Replacement	\$23,230.00
Hardwood Staircase	\$8,740.00
Kitchen Cabinets (Fridge Panels)	\$759.30
Kitchen Cabinets (Island)	\$632.50
Electrical Panel (relocation per code)	\$1,725.00
Miscellaneous deficiencies and remediation (including flooring)	\$5,242.29
Removal of Soaked Garbage from Addition Foundation Void and Floor	\$1,237.40
TOTAL	\$41,566.49

[36] Given the evidence in support of these claims, I find that they are reasonable. In fact, my prediction is that this and more will be spent by Ms. Milsom in order to mitigate the serious errors that Mr. DeBaie committed.

Conclusion

[37] Mr. DeBaie has not proved that he would have been entitled to any further payment from Ms. Milsom, and as such his claim is dismissed.

[38] Ms. Milsom has proved that she has suffered damages, as set out above, which are reduced to \$25,000.00 to remain within this court's monetary jurisdiction. Ms. Milsom is also entitled to the filing fee for her counterclaim of \$66.00.

Order

[39] It is ordered that the claim be dismissed.

[40] It is further ordered that the counterclaim be allowed, and the Defendant have judgment against the Claimant for \$25,000.00 plus costs of \$66.00 for a total of \$25,066.00.

Eric K. Slone, Small Claims Court Adjudicator