SMALL CLAIMS COURT OF NOVA SCOTIA
Citation: *Umeron v. LGJ Construction*, 2025 NSSM 26

Date: 20250611
Docket: 541294
Registry: Sydney

Between:

Rita Nkanga Umeron

Claimant

v.

LGJ Construction

Defendant

Adjudicator:	Darrel Pink
Heard:	May 28 and June 5, 2025, in Sydney, Nova Scotia
Decision:	June 11, 2025
Counsel:	Danielle Arseneau, for the Claimant Stephen Jamael, for the Defendant

By the Court:

The Facts

[1] The Claimant, a newcomer to Cape Breton, purchased a home where she wished to convert the basement to a two-bedroom apartment. In April 2024, a local contractor, who spoke highly of the Defendant, introduced her to its principal, Leo Sutherland. They met on April 11, after which Mr. Sutherland did a design for the renovation.

[2] The Defendant prepared an estimate of about $70000, which the Claimant rejected as too expensive. She made it clear she had limited financial resources. The estimate was revised. On July 14, they agreed on a price of $50,130[1] (including HST). The Claimant was to cover the costs for electrical work through another contractor, so this work was not included. The Claimant paid a $25000 deposit to allow materials to be ordered and work to begin.

[3] At some point, either before work started or within the initial stages of it, changes were made in the plan to relocate the apartment kitchen to align it with he one upstairs. As with most of the arrangements between the parties, there is no

[1] Ex 1/Tab 6

documentation about the timing of this decision or its implications. The move necessitated additional trenching to relocate the plumbing and bring it up to current building code requirements.

[4] The parties agreed on a September completion date, which would enable the Claimant to rent the apartment for the new school year.

[5] Work began with required demolition, trenching in the floors, framing for walls and some plumbing rough-in.

[6] On July 31, the Defendant found water under the subfloor, which had caused rot and mould and had to be removed. In Mr. Sutherland's experience, to cause the damage he witnessed[2] moisture must have been there for some time. He claims he informed the Claimant, who authorized the floor's removal. Again there are no written exchanges between the parties on this matter. That contrasts with the numerous text messages between them in the lead-up to the contract.

[7] Around August 6, work stopped. Mr. Sutherland says there were exposed electrical wires in the ceiling, which made it unsafe for his employees to work on the site. One worker had been shocked by a bare wire. Mr. Sutherland says he did

[2] Ex 2/Tab 2/Photos 6-9

not have the number of the Claimant's electrician, so she gave it to him that day. No one arranged for the electrician’s attendance, and work ceased.

[8] The Claimant, based on the approved estimate, believes only 10% of the contracted work has been done. She seeks the return of the deposit balance. She obtained an estimate of $52849.40 from Arbuck Construction to complete the work covered by the original contract. To have her finished basement apartment, she says that is what she must spend.

[9] The Defendant defends and counterclaims. Its position is that the work done on the house is valued at $34,000, of which $25000 has been paid, and it seeks $9000 more for extra work to address the plumbing relocation and upgrades, and the water infiltration, which required removal of the subfloor and reframing of some areas.

The Store

[10] The Claimant was opening a new store in the Mayflower Mall in Sydney. She had obtained used displays and shelving for the store. In late September, 2024, she asked the Defendant to assist her in remediating the display cases and shelving by repairing, painting and assembling them. Mr. Sutherland dispatched two or three workers to assist with the work. He did not inform the Claimant that work in

the mall was covered by a trade union contract, which required him to charge $80 per hour for each worker. The Claimant did not ask anything about the Defendant's charging for the anticipated work.

[11] The Claimant intended to open the store by October 1, so there was a tight timeframe for the work to be completed. The Defendant was on site from September 23 to October 2. Mr. Sutherland says his men spent one hundred and fifteen (115) hours completing the job, for a charge of $9200. He purchased materials costing $1014.02. In the Defendant's counterclaim, it seeks $11746.13 for this work.

[12] The Claimant was aghast at the charges. She had no idea the costs would be this high, and had she known, she would not have agreed to pay the amounts the Defendant charged.

[13] On the eve of the hearing, the Defendant submitted several pages of handwritten notes. Mr. Sutherland says he keeps a contemporaneous log on each job as a record of the events relating to a contract. Though the Small Claims Court does not have rules that prescribe disclosure requirements, parties are expected to submit to the court and exchange with the other party materials they intend to rely upon. The norm is to do so at least ten days in advance of a hearing. The

Defendant's failure to do so caused an inconvenience to the Court and the Claimant. That was magnified by the Defendant's failure to provide any evidence to support the amount of its counterclaim. The trial had to be adjourned to allow this material to be collected and submitted so a cross-examination on ot could occur.

[14] Mr Sutherland's assertion that the notes are contemporaneous is not believable. One note starts 'Good day Rita: On Sept. 23, when we met at your new shop. I told you that I could not give you a hard dollar quote…' Directing it to the Claimant is not how an internal notation would be written. The language throughout the notes demonstrates they were written after the fact and, to some extent, presented as a justification, as opposed to a record, of what occurred. I do not rely on the notes, and where Mr. Sutherland's evidence and the Claimant's differ, I accept the Claimant's version. In her direct evidence, she was straightforward and clear in her recollection. Her materials were carefully organized and supported her oral testimony.

The Basement Claim – implied contract terms

[15] There are two separate arrangements to be addressed. The contract for the basement renovation and the work at the store.

[16] The parties contracted for the basement refit for a price of $50,130. The contract was for ‘labour and materials’ to complete the renovation following the plan prepared by the Defendant. The Claimant was to provide the electrician. Though no quality standards for materials are specified, the contract does say, ‘if owner wants any products of a higher grade than was quoted, difference to be paid by the owner’. There are no other terms included in the contract.

[17] Should the Court imply additional terms into the contract?

[18] In *Davies v. CBI Cape Breton Island Developers Inc.*, 2013 NSSC 375, Justice MacAdam reviewed the approach to be taken by a court in determining if and when terms should be implied into a contract. He cited the Supreme Court of Canada case (*M.J.B. Enterprises Ltd. v. Defense Construction (1951) Ltd.*, 1999 CanLII 677 (SCC)) as follows

> 29 As mentioned, LeDain J. stated in *Canadian Pacific Hotels Ltd.*, *supra*, that a contractual term may be implied on the basis of presumed intentions of the parties where necessary to give business efficacy to the contract or where it meets the "officious bystander" test. It is unclear whether these are to be understood as two separate tests but I need not determine that here. What is important in both formulations is a focus on the intentions of the actual parties. A court, when dealing with terms implied in fact, must be careful not to slide into determining the intentions of reasonable parties. This is why the implication of the term must have a certain degree of obviousness to it, and why, if there is evidence of a contrary intention, on the part of either party, an implied term may not be found on this basis.
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> In *Halsbury’s Laws of Canada*, “Construction”, in respect to implied terms in building contracts, the authors state, at §HCU-28:

> HCU-28 When terms may be implied. Courts will not rewrite the parties' contract. Courts merely interpret and apply contracts to give them business efficacy. To do so, courts will imply terms in three situations: (1) based on custom or usage of the trade; (2) as legal incidents of a particular class or kind of contract; or (3) based on the presumed intention of the parties where the implied term is necessary to give business efficacy to a contract. Extrinsic evidence of custom and usage of the trade is admissible as evidence to support an inference that the parties to the contract would have understood such a custom or usage to be applicable. Terms are implied in the same manner on the basis of a presumed intention. Terms implied as the legal incidents of a particular class or kind of contract do not depend on presumed intention. Such terms will only be implied if they are necessary. Reasonability is not enough. Terms implied as necessary to give business efficacy to a contract are implied on the basis of judicial determination after the fact of presumed intention at the time of the contract. Determination of the presumed intentions of the parties is subjective, not objective. It focuses on the intentions of the actual parties. Courts are careful not to impose after-the-fact intentions of objectively reasonable parties. Thus, terms will not be implied if there is evidence of a contrary intention by either party. In Québec, a general duty of good faith is implied into all contracts.

[19] Based on these legal principles, what terms should terms be implied based on **custom or usage of the trade** or on the **parties' presumed intention where the implied term is necessary to give business efficacy** to a contract?

[20] The Claimant is unsophisticated. She is an immigrant, who had some knowledge about property before relocating to Canada, but no experience here. The facts provide no basis for assuming terms should be added to the contract, based on her knowledge of the industry or 'custom or usage of the trade'.

[21] She had a limited budget and made that clear. She wanted a basement apartment available for September; she made that clear. On the other hand, Mr. Sutherland had extensive experience. He could have put things in writing to specify the parties' intentions.

[22] Renovating a basement requires access. Though the list of work does not specify stairs/steps to be included, it would be inexplicable to have this work done without a connection to the main floor. I find it was an implied term in the contract that there would be stairs from the basement to the main floor.

[23] Mr. Sutherland alone knew the effect that relocating the kitchen, with the associated extra trenching and plumbing work, would have on the overall costs; he alone knew there would be costs associated with removing the subfloor. In both instances, given the circumstances of the Claimant, it was Mr. Sutherland's responsibility to raise the changes that were being made and to discuss their costs. He ought to have recorded any exchanges in writing. Though he might have assumed the costs of the additional work would be an implied term, that is not the case for the two parties. I cannot find that the Claimant would have agreed to extra expenses, and therefore, based on the custom of these parties or their assumed intentions, I cannot imply terms to the contract that specify the extra work would be paid for on the basis that the Defendant charged for it.

[24] The position of the Claimant, based on the quote from Arbuck Construction[3], is that only 10% of the work required by the contract has been

[3] Exhibit 1, Tab 1

completed. No independent oral evidence supports that conclusion. Most materials were not ordered or supplied. What has been done is the framing, but the evidence provides no information on the price of the materials involved. Windows, insulation, gypsum board, etc., have not been ordered. The Defendant's contract required framing. Arbuck's estimate does not require that work as it has been done. I find, based on the time spent on the jobsite, that the Defendant's work of framing is valued at 20% of the contract price, which I round to $10,000.

[25] The completion date for the work was to be early September. That date was agreed upon by the parties and is implied as a contractual term.

[26] The Claimant's electrician was to do the electrical work. The contract does not specify a name or how he was to be involved. Given that the Defendant was acting as a general contractor and as such arranging for others to attend the jobsite to complete their work, efficacy requires that a term be implied in the contract to necessitate the Defendant to arrange the attendance of the Claimant's electrician when required. Mr. Sutherland says he asked the Claimant for the name of her electrician after one of his men was shocked. The Claimant gave it to him, but he still refused to continue working.

[27] There is no evidence on the extent of any danger or whether a licensed electrician was required to address the exposed wires. The Claimant gave contact specifics. There was no logical reason for the Claimant not to give the Defendant the information she had to advance the construction. I accept her evidence and find that the Defendant failed to contact the electrician to have the work done, so he could return to the house to complete the job.

[28] After he left, he did not follow up with the Claimant to determine what was happening. He had a timeframe for completion. His failure to find out the status of the work after he left the house, confirms my conclusion that he abandoned the Claimant's work.

[29] By failing to arrange for the attendance of the electrician and abandoning the project and not returning to complete it, the Defendant breached his contract with the Claimant. There was an anticipated completion date and his failure to prosecute and complete the job in time for the September rental season constitutes a breach of contract. For that breach, the Claimant is entitled to damages.

[30] The Defendant's breach of contract does not mean it is not entitled to be compensated for the value conferred (in this case, by carrying out some work in the basement) on the Claimant under the legal principles of restitution. See McCamus,

John D., The Law of Contracts, 3rd. ed., p.1143. Even though he breached his obligation to the Claimant, equity requires the court to assess and determine the value, if any, of the work done and consider that in the overall assessment of damages.

[31] There is value in the work done to move the kitchen and to remove the water-damaged floor. The Claimant benefited from it and should compensate the Defendant under the principle of restitution. The Defendant says the work is worth $34000, which includes the framing.

[32] The Defendant breached the contract by abandoning the job. Completing the basement renovation will cost the Claimant more than $52000, if she accepts the Arbuck quote. The measure for damages for breach of contract is the sum required to put the innocent victim (the Claimant) in the position she would have been had the Defendant not breached its obligation. That sum is the amount quoted by Arbuck ($52849.40).

[33] Because there is value in the work done, that sum can be set off from the damages payable to the Claimant. I value the work done by the Defendant, which the Claimant must pay, at $25000 (inclusive of HST). Therefore, the Defendant

must pay damages for breach of contract to the Claimant $52849.40 less $25000 equals $27,849.40.

The Store Award

[34] The Defendant counterclaims for the value of work done on a time and materials basis to assist the Claimant in opening her new store. There was no contract between the parties for this work. Essential for the formation of a contract is that the parties reach a consensus on what the contract is to involve and how the pricing is to be determined. Though the parties agreed the work would be done, there were no discussions about how it was to be charged.

[35] Had the Claimant known she would be charged at union rates of $80.00 per hour, she would not have used the Defendant's services but would have gone elsewhere. She did not agree to pay those rates.

[36] The evidence of the Defendant's employees affirms that the work was done and the time it took. The nature of the job made it inefficient, as at times workers were literally watching paint dry, because subsequent coats of paint could only be applied after the earlier ones had cured. Even Mr. Sutherland acknowledged this was not the best use of his forces, so he assigned them to other jobs. He appreciated that the value to the Claimant was less than the time his men spent.

[37] Given his knowledge, it was incumbent on Mr. Sutherland to alert the Claimant to what costs she should expect on a 'time and materials' basis. He should have offered her a more reasonable approach to do the work, such as having it done offsite, so 'mall union rates' would not apply. There was no contract for the work, but it was of real value to the Claimant, as it allowed her to open her store on time.

[38] The principle of *quantum meruit* or unjust enrichment can be applied to quantify the amount the Claimant must pay the Defendant.

[39] In *Sheehan v. Samuelson*, 2023 NSSM 27, I analyzed the application of this legal doctrine and repeat here what I said:

> [59] This Court has considered recovery under the equitable principles in many cases. The most often referred to is the decision of Adjudicator Parker in *Whacky's Carpet and Floor Centre* v. *Maritime Project Management Inc*, 2006 NSSM 4.
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> [60] The Nova Scotia Court of Appeal recently considered how unjust enrichment is to be approached in *Canada (Attorney General)* v. *Geophysical Services Incorporated*, 2022 NSCA 41. In para 91, the Court stated:
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> > In *Kerr*, Cromwell J., for the Court, noted the wide variety of situations where the law of unjust enrichment has been used to provide redress for claims of inequitable distribution on the breakdown of domestic relationships. He commented on the law's recognition of categories where retention of a conferred benefit had been considered unjust, but the Canadian law of unjust enrichment was not limited to those categories. He explained:
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> > At the heart of the doctrine of unjust enrichment lies the notion of restoring a benefit which justice does not permit one to retain: *Peel (Regional*

> *Municipality) v. Canada*, 1992 CanLII 21 (SCC), [1992] 3 S.C.R. 762, at p. 788. **For recovery, something must have been given by the plaintiff and received and retained by the Defendant without juristic reason**. A series of categories was developed in which the retention of a conferred benefit was considered unjust. These included, for example: benefits conferred under mistakes of fact or law; under compulsion; out of necessity; as a result of ineffective transactions; or at the Defendant's request: see *Peel*, at p. 789; see, generally, G. H. L. Fridman, *Restitution* (2nd ed. 1992), c. 3-5, 7, 8 and 10; and Lord Goff of Chieveley and G. Jones, *The Law of Restitution* (7th ed. 2007), c. 4-11, 17 and 19-2
> Canadian law, however, does not limit unjust enrichment claims to these categories. **It permits recovery whenever the plaintiff can establish three elements: an enrichment of or benefit to the Defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment**: *Pettkus*; *Peel*, at p. 784. By retaining the existing categories, while recognizing other claims that fall within the principles underlying unjust enrichment, the law is able "to develop in a flexible way as required to meet changing perceptions of justice": *Peel*, at p. 788. (emphasis in original).

> [61] Applying this approach to the facts as I have found them, the Defendant received a benefit from the Claimant. There is no juristic reason (one based on or justified by a legal principle) that would cause a court to conclude he should not have to compensate her for that benefit….

[40] There is no reason the Defendant should not be compensated for the value of the work provided to the Claimant, even though there was no contract relating to it. The Claimant was aware of what was involved. She was present when much of the work was being done. The work was urgent, as the time to open the store was short. She appreciated that the Defendant made his forces available to her over a long weekend in September. Given the circumstances, I find a reasonable rate for the work done was $40 per hour. For 115 hours, that makes it worth $ 4,600 plus HST at 15% ($690) = $ 5,290. Materials at $1014.02 are to be added.

[41] The Claimant provided a quote of $1133.90 for painting of the store furniture. She suggests this is what she should pay. Though that may have been reasonable if none of the time pressures to get the store open were applicable, I do not accept it is the value that the Defendant could have charged in the Claimant's hurried circumstances.

[42] The Claimant must pay the Defendant $6304.02 for the value of the work to prepare for the opening of her store.

Conclusion

[43] The amount owed by the Claimant for the store ($6304.02) may be set off against the damages due to her ($27,849.40). Because success is split between the parties, there is no award of costs. If an order is required, counsel for the Claimant should prepare it, have the Defendant's counsel consent to the form and submit it to the Court via email.

Darrel Pink, Small Claims Court Adjudicator