Claim No: 421366

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Classic Building Cleaner v. Floors Plus, 2013 NSSM 55

BETWEEN:

CLASSIC BUILDING CLEANER,
a division of 3031551 Nova Scotia Limited

Claimant

- and -

FLOORS PLUS

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on December 17, 2013

Decision rendered on December 19, 2013

APPEARANCES

For the Claimant	Deborah Spafford and Daren Spafford, owners
For the Defendant	Paul Hornbuckle, manager Pat Gibson, owner Stephen Taylor, branch manager Brittany Beazley, Admin. Assistant

BY THE COURT:

[1] The Claimant is suing its former customer for terminating a contract, without notice, allegedly contrary to the terms of the written agreement.

[2] The Defendant says that it was dissatisfied with the Claimant's work and that it was justified in summarily cancelling the contract.

[3] The Claimant performs cleaning services. The Defendant is a flooring company with a large retail showroom and facility in Dartmouth, Nova Scotia. In February 2010 the parties signed a contract whereby the Claimant would perform cleaning services on a once per week basis, at a price of $450.00 per month, plus HST, covering some but not all of the premises. This went along for almost three years.

[4] The contract contained a clause that stated:

> *"a written six (6) month notice given by either party can dissolve this contract. Termination would begin at the end of any given month."*

[5] In about early November 2012, there were some discussions between the parties about adding additional areas to be cleaned, at an additional charge of $200.00 per month, for a total of $650.00. Daren Spafford signed a new version of the signature page to the contract and sent it to the Defendant. The Claimant started cleaning the additional areas.

[6] Unbeknownst to either of the two owners of the Claimant company, Daren and Deborah Spafford, Steve Taylor of the Defendant signed and faxed the signature page of the contract back to the Claimant on the 4th of December, having made a unilateral change. Where the clause reads “six month notice” he scrathed it out and handwrote “2 (two)” and initialled it. According to the Spaffords, the fax was routinely filed away without anyone noticing this unilateral change.

[7] Steve Taylor testified that he had had a conversation with the Claimant’s former General Manager, Jody Stewart, during which time he says that he told her that he was sending it back with the six month term reduced to two. Ms. Stewart is no longer employed by the Claimant company.

[8] One of the issues I need to resolve is whether the applicable termination term is six or two months. I will deal with that later.

[9] The Defendant has taken the position that it was dissatisfied with the quality of the cleaning. It says that this justified it in terminating the contract without notice.

[10] The Claimant concedes that there were some issues that were brought to its attention, and that it had taken steps to address them. This all came to a head on March 13, 2013, when a meeting was held and the owners of the Claimant were shown the areas where the Defendant was unhappy. The Claimant responded by sending in an extra crew to do a thorough re-cleaning.

[11] Within one day of this meeting - on March 14, 2013 - the Defendant served notice by email that it was cancelling the contract.

[12] I find it quite significant that there is not a single written complaint or any form of notice prior to March 2013. Even if the work was arguably deficient, and there is controversy as to how significant any such deficiencies may have been, there was an onus on the Defendant to give proper notice of poor performance with a meaningful opportunity for the Claimant to improve its performance and meet the Defendant's expectations. Elementary fairness demands that.

[13] To terminate a service contract like this, without notice, there must be a fundamental breach by the other party. A fundamental breach is one that amounts to a repudiation of the contract. This did not happen here. The Claimant was determined to perform the contract. It admitted that there may have been problems with some of its employees not performing up to par, but its desire to improve signalled that it considered the contract in force.

[14] The Defendant had no legal basis to terminate the contract without notice.

How much notice?

[15] There is evidence that Mr. Taylor brought to the attention of someone in authority with the Claimant, namely Ms. Stewart, that he was signing the contract back with a two month termination provision. Ms. Stewart was not at the hearing to deny this. I have no reason to doubt Mr. Stewart's evidence.

[16] Furthermore, the Claimant cannot profit from its own failure to read the contract. The parties had been operating on this basis for four months, and the Defendant had a reasonable basis to conclude that the terms had been agreed to in all respects. Despite the fact that the Claimant never initialled the change, in my view the changed term is binding upon them as a matter of practice.

[17] As such, I take the view that two months' notice would have been required, with such notice effective as of the end of the month it was given, namely the end of March 2013. As such, the Claimant is entitled to payments for March, April and May of 2013. This amounts to $1,950.00. I do not believe that HST is chargeable on this, as this money represents legal damages for breach of contract.

[18] The Claimant is also entitled to costs in the amounts of $96.80 for filing and an additional $25.00 to cover the transportation costs associated with serving the claim.

Eric K. Slone, Adjudicator