

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: A.M. Hebert Construction Ltd. v. I-Rock Construction Ltd., 2013 NSSM 60

Claim No: SCCH 419176

BETWEEN:

Name A.M. Hebert Construction Limited

**Claimant/
Defendant by
Counterclaim**

Address 30 Leeward Avenue
Hammonds Plains, NS B3Z 1J9

Phone (902) 210-2224

Name I-Rock Construction Limited

**Defendant/
Counter-
claimant**

Address 27 Valentine Lane
Hammonds Plains, NS B4B 1P2

Phone (902) 830-3818

Date of Hearing: October 17, 2013

Date of Decision: October 31, 2013

Marc Hebert appeared for the Claimant.

Farron Simms appeared for the Defendant.

DECISION

This matter came before me on October 17, 2013. The original claim was in breach of contract for trucking services provided by the Claimant, A. M. Hebert Construction Limited (“AM Hebert”) for the Defendant, I-Rock Construction Limited (“I-Rock”) in furtherance of a job installing sidewalks in East Preston, Nova Scotia. The Defendant counterclaimed for payment for fill and excavation services from a separate job in Beaverbank. At the conclusion of the hearing, I rendered an oral decision allowing both the claim and counterclaim in full with each party

bearing their own costs. The facts are straightforward but I indicated I would supplement my oral decision with written reasons. These are those reasons.

In spite of the considerable animosity between the parties, the salient facts are not seriously in dispute.

On July 25 and 26, 2013, AM Hebert trucked and hauled a load of fill to East Preston. The job was a sub-contract of the Defendant's contract with Halifax Regional Municipality. Marc Hebert, the president of AM Hebert, sent an invoice to I-Rock, in care of Ferron Simms, the owner. The invoice was for \$1242, namely 18 hours at \$60 per hour, or \$1080 + HST. In his evidence, Mr. Simms acknowledged the work was performed by the Claimant and submitted that the Defendant is responsible for its payment. His position is curious as he delivered a very rude and vulgar response to Mr. Hebert's initial demand for payment and the commencement of the claim. Nevertheless, the claim is allowed for \$1242.

The counterclaim arose as a result of a job performed by I-Rock for AM Hebert. The job involved the removal of fill from the Defendant's facility along with excavation services performed by I-Rock. Mr. Simms testified that the price was \$480 for the fill and \$500 for the labour plus HST, or \$1127.00. The Claimant acknowledged the Defendant performed the work. He defended the counterclaim on the ground that he did not personally authorize the work. Specifically, the job was initiated by Danny Hamilton and Mr. Simms but Hebert was not consulted. Both Mr. Hamilton, who gave evidence, and Mr. Simms described Mr. Hamilton as Mr. Hebert's business partner.

Mr. Hebert and Mr. Hamilton have an informal business relationship. Mr. Hebert described Mr. Hamilton as his sponsor to help train Mr. Hebert in the ways of operating a construction business following Hebert's military career. Mr. Hebert testified that Mr. Hamilton has been put in charge of AM Hebert's equipment and speaks and transacts on behalf of his company. Mr. Hamilton is not a shareholder or director and, according to Mr. Hebert, is not an employee. Any transactions must be authorized by him (Hebert). There are no documents to that effect. Indeed, most of the arrangements are verbal and not supported by any documentation. Of course, an oral agreement is legal and enforceable. However, most findings concerning the arrangements between Hebert, Hamilton and the Claimant must be based on the evidence in its entirety and its credibility.

I do not accept most of the evidence of Danny Hamilton. His testimony was mostly self-serving and motivated by animosity towards Mr. Hebert. I did not consider any of it in the course of this decision. However, based on the evidence of Mr. Hebert and Mr. Simms, I find Mr. Hamilton was an agent for the Claimant company. The reasons for this finding are described below.

The test for a finding of agency has been the subject of numerous cases in Canada. A decision by Justice Hall of the Supreme Court of Nova Scotia in *Horne v. Capital District Health Authority*, 2005 NSSC 41 states as follows:

“Under the common law principle of agency, a principal may be bound by the acts of his or her agent under circumstances where the agent has the ostensible or apparent authority to act and bind the principal. This is usually referred to as the doctrine of "agency by estoppel". In order for the doctrine to arise three requirements must exist. First, there must be a representation or holding out by the principal by a statement or conduct indicating the agent's authority to act for him or her; second, there must be a reliance on the representation by the third party; and third, there must have been an alteration to the third party's position as a result of the reliance. (See Friedman, **The Law of Agency**, 7th Edition, Chapter 6).”

I find that Mr. Hamilton was authorized to conduct business with Mr. Simms and others on behalf of AM Hebert as part of his role as sponsor and mentor of Mr. Hebert. He had conducted business on behalf of AM Hebert with Mr. Simms in the past. (He has also done so for his own business.) Mr. Hebert authorized Mr. Hamilton to do so and testified to working jobs that were secured by Hamilton. It is clear that Mr. Simms relied on these assertions in dealings prior to this transaction and could reasonably expect to do so from that point forward. Finally, it is not disputed that I-Rock provided fill and labour for the property in Beaverbank. In that way, the Defendant altered its position as a result of the reliance, namely Mr. Simms allowed I-Rock to remove fill (or deliver it himself) and performed the excavation as requested. It is not relevant in making this finding that Mr. Hamilton may have acted on his own, unless it was known or ought to have been known by Mr. Simms. I find that was not the case. I-Rock is entitled to payment for the job. Any claim against Mr. Hamilton for wrongfully keeping funds for this or any other job are not relevant to the outcome of this claim and counterclaim.

Having found that Mr. Hamilton was acting as agent for AM Hebert, I find the company is bound by his actions and liable for the work performed by the Defendant. Given that finding, it is not necessary to decide whether Mr. Hebert and Mr. Hamilton are business partners. That issue is for another court on another day.

I allow the counterclaim of \$980 + HST for a total of \$1127.00.

Summary

In summary, the claim and counterclaim are allowed with each party bearing its own costs. The claim shall be set off by the counterclaim:

Amount of Claim:	\$1242.00
Amount of Counterclaim:	<u>(1127.00)</u>
Total Judgment:	\$ 115.00

Therefore the Claimant shall have judgment against the Defendant for \$115.00.

Order accordingly.

Dated at Dartmouth, NS,
on October 31, 2013;

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
Copy: Defendant(s)