Claim No: 425101

# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: The Water Shed v. Giovannetti, 2014 NSSM 37

BETWEEN:

THE WATER SHED

Claimant

- and -

TOM GIOVANNETTI and
CIVTECH ENGINEERING & SURVEYING LTD.

Defendants

---

## REASONS FOR DECISION

---

**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on April 15, 2014

Decision rendered on July 1, 2014

**APPEARANCES**

| | |
|---|---|
| For the Claimant | self-represented |
| For the Defendants | Tom Giovannetti, on his own behalf and as president of Civtech Engineering & Surveying Ltd. |

**BY THE COURT:**

[1] The Claimant, which is a trade name under which Stephen Burke operates, hired the Defendant Civtech Engineering & Surveying Ltd. to design and assist him in constructing a parking lot for a commercial building that the Claimant (or a related company) was developing in Dartmouth. The relationship soured and the Claimant decided to terminate that company's services.

[2] It is not clear why the Claimant brought this claim against Tom Giovannetti (wrongly shown in the originating documents as "Tom Giovanni") personally. The style of cause will be amended to show the proper spelling of Mr. Giovannetti's name. Mr. Giovannetti is the principal of Civtech Engineering & Surveying Ltd., but that company is a separate legal entity. There is no evidence of any dealings between the Claimant and Mr. Giovannetti personally. As such, the personal claim against him will be dismissed, regardless of the outcome of the claim against the company, which I will hereafter refer to as the Defendant.

[3] After having paid some bills in the normal course of their relationship, in April 2012 the Claimant provided the Defendant with a requested $2,000.00 retainer (actually $2,300.00 including HST). The Claimant sues to have that retainer returned to him as he believes that he was otherwise paid up to date and that the Defendant did not do any work for which he must pay.

[4] The Defendant claims that it did work which used up the retainer, and more, and counterclaims for $1,772.44 as still owing under the contract.

[5] The document that governs the relationship is a Proposal dated April 10, 2012, which sets out the Scope of Work and breaks the project down into several components, with fee rates applicable at each stage. The Claimant signed the proposal - discussed below - indicating his acceptance of the terms.

[6] The Claimant had a number of complaints about the work that the Defendant did. His major complaint was that the Defendant allegedly designed the parking lot with grades that were too extreme. As I understand it, parking lots need to have a small grade or slope to allow water to drain into catch basins and be carried away. If the grade is too steep, it can present a hazard, such as by causing car doors not to remain open when someone is trying to get out of a car. There are apparently ideal grades specified in the municipal regulations. The Claimant says that the Defendant's design exceeded those grades.

[7] The issue with grades was tied up with other design issues. The Defendant claims that the grades were affected when additional walkways next to the building were added to the plan, affecting the size of the parking lot. There was also a difference of opinion as to what grades are acceptable. The Claimant relied on information obtained over the internet, about standards in other jurisdictions. The Defendant contended that the grades were well within the standards for Halifax Regional Municipality.

[8] Hiring an engineer in this type of situation involves more than just paying for work, as it is done. The engineer goes "on the record," so to speak, with the municipality, and becomes responsible (to an extent) for what is done. The municipality relies on the engineer's letters and certificates to move the project forward. The engineer is obliged to respond to concerns raised by the

municipality, and may spend time for which it is entitled to be paid. This is what happened here. The Defendant entered into a written agreement with the Claimant, which constrained the ability of the Claimant just to fire the Defendant when he saw fit.

[9] Under the "Proposal" which the Claimant signed, there is explicit provision for fees to be paid, as well as for the Retainer. At the trial, Mr. Burke appeared not to have recalled that the retainer was an explicit part of the Proposal:

> **FEES**
>
> FEES Group A ( Random Inspections as geotechnical certifies subgrade & base)
> **Item 1,2 & 3**
> Engineering Inspections (Sewers & parking lot)
> Engineer @ $110/hr Engineering (Certified Eng. Technologist) @ $75/hr Survey Crew @ $100/hr
> **Developer responsible for all inspection fees/procedures**
>
> **FEES Group B (FULL TIME) Water-line**
> **Item 4**
> Engineer @ $110/hr Engineering (Certified Eng. Technologist) @ $75/hr Survey Crew @ $100/hr
> **Developer responsible for all inspection fees/procedures**
>
> **FEES Group C**
> **(ADDITIONAL CONSULTING /DESIGN SURVEY LAYOUT/INSPECTIONS)**
> **Design build changes, lot grading layout and landscaping lay-out, boundary line locations, building stake-out etc.**
> Engineer @ $110/hr Engineering (Certified Eng. Technologist) @ $75/hr Survey Crew @$100/hr
>
> **Time Log**
>
> Civtech will keep a time log for all activity on the project of which will include all field work, inspections, office work and any associated administration
>
> **Payment Schedule**
>
> **RETAINER REQUIRED FOR PROGRESS INSPECTION SCHEDULE ETC S2000.00 + HST TO INITIALIZE ENGINEERS FIELD REVIEW OF CONSTRUCTION**

[10] It is this latter retainer that the Claimant believes he should have refunded. He says that he became dissatisfied with the Defendant's work shortly after paying this retainer, and that he fired them. In the Claimant's view, no work was done that would have justified using any of the retainer.

[11] The Defendant says that work was being done, not all of which had yet been billed, and produced bills and time records showing that the retainer was used up, and that the Defendant owed a further $1,772.44.

[12] In general terms, I accept the Defendant's perspective on what went on. I do not believe that the Claimant had a clear grasp of everything that the Defendant was doing on his behalf.

[13] There is no basis to return the retainer, unless it were found that the Defendant did not do the work that the retainer covered. I find that the Defendant did such work, and more.

[14] The only question in my mind is whether the Defendant is entitled to everything it claims. While there may be time entries to back it up, I was disturbed by the evidence of the Defendant's employee Alan Stevens, an engineering technologist, who admitted that he had made some errors, which necessitated the redrawing of plans on one or two occasions. When asked by the Claimant whether he should have to pay for Mr. Stevens's mistakes, Mr. Stevens told the court that, in his view, any time he "touched" the Defendant's file, he was entitled to charge for his time. With respect, I do not accept that this is the case. This overstates the nature of the relationship. When errors are

made, and time needlessly wasted, a professional does not have a right to charge for correcting what should have been done right in the first place. This may not apply in particularly challenging tasks, where it is expected that it may take more than one try to succeed. But there is no evidence that this is applicable here. The Claimant is entitled to have his bill adjusted.

[15] This is much like the situation with so-called taxations of lawyers' bills, where it may be reduced by the Court on a showing that time was needlessly spent. I believe the same approach is appropriate to bills rendered by an engineer. Simply put, the Defendant cannot succeed on its counterclaim to the extent that its work was below any reasonable standard and was either of no value, or had to be redone.

[16] The evidence is not easily analysed to show what time was spent correcting errors, but there definitely was some. I am satisfied that some plan revisions were only needed because of errors made by the Defendant. As such, I am prepared to make a global assessment that the sum of $500.00 should be deducted from the Defendant's bill.

[17] In the result, the claim is dismissed and the counterclaim is allowed in the amount of $1,272.44.

[18] The Defendant is entitled to the cost of commencing the counterclaim in the amount of $64.10.

**Eric K. Slone, Adjudicator**