SCY 248792
Date: 20050815

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA
Cite as: Dulong's Flooring & Stairs Ltd. v. MacKinnon-Cann Inn, 2005 NSSM 25

Between:

DULONG'S FLOORING & STAIRS LTD.

CLAIMANT

-and -

MACKINNON-CANN INN
MICHAEL TAVARES AND NEIL HISGEN, OWNERS

DEFENDANTS

Adjudicator
David T.R. Parker

Heard: July 22, 2005
Decision: August 15, 2005

Counsel:

Gregory Barro for the Claimant
The Defendants were self represented

This matter came before the Small Claims Court on July 22, 2005, at Yarmouth, Nova Scotia.

The Claim is relatively straight forward and it involves work done for the Defendants at an inn owned and operated by the Defendants.

I shall break down the claim as presented to the Court (Exhibit C-4).

Invoice for work completed, including HST:	$7,200.00
1 Year's Interest:	2,592.00
Interest on Line of Credit:	1,197.09
Piece of Jatoba wood for floor:	43.80
Brass Rod:	18.98
Labour for Door and Threshold (30 hours @ $35.00)	1,050.00
Legal Fee:	250.00
Total Claim:	$12,351.87

FACTS

The Defendants did hire the Claimant to create and install a rather elaborate floor for a Victorian Inn called the MacKinnon-Cann Inn located just off the main street in Yarmouth, Nova Scotia.

- The contract price agreed to between the parties, including HST, was $7,200.00.

- A dispute arose during the restoration between parties to this action over some problems with the workmanship.

- The dispute elevated to the point where the Defendants would not allow the Claimant's owners and workers on site.

- The Claimant Company was sold to new owners shortly thereafter.

- The new owners met with the Defendants and the new owners supplied three birch thresholds, repaired the pocket door and installed a Jatoba insert.

- The Defendants have paid $2,000.00 on their bill.

Those are the basic facts of this case that are not in dispute. What is in dispute are the following:

(1) The installation of thresholds and pocket door molds.
(2) The "water-like marks" on the jatoba.
(3) A hammer-like mark in a door.
(4) Whether there was an agreement with the new owners that the total cost would be $4,000.00.

The original owner of the Claimant Company insisted that the thresholds and pocket door molds were not part of the original deal. The Defendants' position was that they had agreed to do the thresholds and the pocket molds.

Unfortunately, there was no written contract as to what exactly was to be done with the floor. From a commonsense perspective, one would anticipate that thresholds would have to be put in along with a new floor. However, I cannot determine who is correct here. Ultimately, the

Defendants had the thresholds and doors completed by the new owners for which they claim $1,050.00. I have considered that part of the claim and with respect to that charge it was developed after this claim decided to be perused in court and much of the time (labour charge) was spent looking for material. Further, the charge of $35.00 per hour for putting in thresholds appears excessive. I would reduce the costs of putting in the thresholds from $1,050.00 to $440.00 bases on 22 hours labour at $20.00 per hour. I have also considered the Claimant's evidence that he underestimated the job by $3,393.80 (Exhibit 1) and based on that and the previous comments on the Defendants' obtaining the thresholds and door molds I would allow $440.00.

With respect to the "water-like marks" on the jatoba, the previous owner who installed the floor said this was a natural occurrence. The Defendants insisted it was a result of sweat from the installer. Notwithstanding the previous owner's assertion that it is a professional job and that he didn't tell the Defendants the floor could look water stained, and it does not happen often, and he did not think it was important, the pictures of the floor indicate otherwise. It did not look professional and it is understandable how upsetting it would be to see the stains. It would appear this was rectified by [someone working for] the new owners and the Defendants were content with same as note in paragraphs 12 and 14 of the Defendants' pleadings. This, along with the length of time to complete the job, the finish, having other works in the areas and the normal stress of doing renovations led to stress between the parties involved. This led to some unnecessary comments made by each of the parties and aspects of defamation could be considered, but not in this Court. It is without jurisdiction.

There is no proof that the Claimant caused a hammer-like mark on the door and it is just as possible that this was caused by other workers.

Therefore, before exploring the new contract with the new owners, it is my view that there was a contract for $7,200.00 including tax to do the new floor. The thresholds and door molds were completed and a reasonable cost for those would be $440.00, leaving a total cost of $7,640.00 for the work less $2,000.00 already paid, or $5,640.00 balance owing. With respect to interest accruing on the invoice, this would only occur after the job was completely finished and the Defendants were clearly aware that interest was accruing through regular receipt of invoices. This was never done. I would, however, allow some prejudgment interest of 4% per annum for the year on the outstanding amount, which interest would amount to $225.00. The interest on the line of credit would not be allowed, nor would legal fees or the cost placing of the replaced jatoba. I would allow costs for the piece of brass rod as that was an extra, a cost of $18.98.

The Defendants state the new owners and themselves arrived at a new agreement. The Defendants would pay the new owners $4,000.00 if they fixed the floor and put in thresholds and walked away from the matter. The new owner said she never agreed to this.

It does not matter whether she agreed to it anyway as there were existing obligations between the Claimant company and the Defendants and any new contract or agreement to accept part payment of a valid debt due under the original contract would lack good consideration. If that were allowed to happen creditors would constantly be put in the position of accepting part payment or at least be at the mercy of a person who owes them money.

The Order shall reflect the amount owing to the claimant as noted in this Decision.

As a final comment, after writing this decision I reviewed the Frank Magazine article and also after listening to the Defendant Michael A. Tavares and having viewed the MacKinnon-Cann Inn from the outside on leaving the area, I have to agree with Frank that Yarmouth is very fortunate to have such beautiful inns. It is truly a unique town in Nova Scotia which hopefully will see a continuation on this type of historical development and restoration.

Dated at Yarmouth, Nova Scotia this 15th day of August, A.D., 2005.

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David T.R. Parker
Adjudicator of the Small Claims
Court of Nova Scotia