

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Household Finance Corporation of Canada v. Mansfield; Mansfield v. Floors
Plus More, 2004 NSSM 9

BETWEEN: Claim No. 228579
Date: 20041230

Name: **Household Finance Corporation of Canada** Claimant

- and -

Name: **Joseph Leslie Mansfield and Judy Lynn Powers** Defendants

AND BETWEEN:

Claim No. 228521

Name: **Joseph Leslie Mansfield and Judy Lynn Powers** Claimant

- and -

Name: **Floors Plus More** Defendant

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on December 18, 2006. This decision replaces the previously distributed decision.

Counsel:

Claimant - Household Finance Corporation: Steven G. Zatzman
Defendants/Claimants - Joseph Mansfield and Judy Powers: Self Represented
Defendant - Floors Plus More - Srinivasen P. Pillay

D E C I S I O N

[1] These two proceedings were scheduled to be heard together as they are intimately related and arise from the same transaction. Pursuant to Section 25 of the *Small Claims Court Act* I heard the claims together and dealt with them as a consolidated proceeding. None of the parties took issue or disputed this mode of proceeding.

[2] The hearing was held on October 18, 2004, and based on the evidence, oral submissions and written submissions filed following the hearing date, I make the following Order:

Deficiencies

[3] Mansfield and Powers are claiming an offset of \$6,500.00 for alleged deficiencies in the insulation job performed by Floors Plus More pursuant to a contract entered into in September 2002.

[4] There appears to be no dispute that there were indeed deficiencies. However, I find the amount of \$6,500.00 to be excessive.

[5] For one thing, I find the claim for the accommodations and removal and replacing furniture to be too remote, as a matter of law, and not sufficiently proven by the evidence. While the burden of proof in a civil matter is **not** proof beyond a reasonable doubt, it is nevertheless proof on a balance of probabilities, and, on this issue, Mansfield and Powers have the onus to prove to the Court that the claimed damages or losses have been incurred. I do not accept that the evidence they present on this score establishes that burden.

[6] I do accept the figures in option 4 in Tab 6 of Exhibit C1. As well, considering Mr. Dempsey's evidence that the additional work would perhaps be a couple of hundred dollars I would allow a total amount of \$2,500.00 as a deficiency allowance.

Assignment - Setoff

[7] I understand from Mr. Zatzman's written submission of November 3, 2004, that he acknowledges of behalf of his client, HFC, that a deficiency setoff would apply as against the assignee of the contract, in this case, HFC. Mr. Zatzman refers to the Supreme Court of

Canada case of *Holt v. Telford*, [1987] 2 S.C.R. 193, which is obviously binding law on this Court.

[8] I would note as well that there would appear to be nothing in the written terms of the contract between the buyers, Mansfield and Powers and the sellers, Floors Plus More, which would purport to exclude the right of setoff as against the assignee.

[9] I would note as well that in the seller's assignment portion of the document (which is in fact a separate agreement) the seller, Floors Plus More, indemnifies the assignee, HFC, in respect of any set off raised by the buyer. Any rights or issues arising under that provision is not before the Court in these proceedings but nevertheless it does provide an acknowledgment by HFC that any right of setoff would "travel" with the assignment. This provides further support for my finding.

Calculation of Interest

[10] The written contract dated September 9, 2002, and signed by Mansfield and Powers provides for payment becoming due on March 9, 2003. The total amount then due was \$11,472.97. Obviously, in light of my previous comments, that amount will be subject to the setoff amount of \$2,500.00. The contractual wording then goes on to state:

In the event of default and payment of any amount when due, interest shall be charged at the rate of 29.9% per annum on the amount in default.

[11] Based on this Mr. Zatzman for HFC submits that the interest calculation would commence from April 1, 2003, through to October 31, 2004, a total of 19 months.

[12] To this, Mr. Mansfield and Ms. Powers assert that it was represented to them that HFC would not release funds to Floors Plus More before the job was completed and/or HFC received final approval. It would seem that Mansfield/Powers would raise this to a

contractual obligation such that if it is not complied with interest does not begin to run until there is a final approval by the customer.

[13] Apart from the evidence being somewhat equivocal on this issue, the difficulty I have with this proposition is that it would give the buyer the ability to indefinitely delay payment to the seller for presumably, even the most minimal deficiency. It seems to me that such a provision cannot be rationalized or implied from a business efficacy point of view. And, certainly, it is not part of the written installment payment contract.

[14] It is also not irrelevant to note there that it is HFC that has brought this matter to a head by issuing pleadings under date of July 2, 2004. The Mansfield and Powers claim against Floors Plus More is obviously a response to that and was filed on August 18, 2004.

[15] While HFC, as a matter of law, is bound by the setoff amounts, as a practical matter, it has in no way failed in its obligations. It is simply the financier and the facilitator of the commercial transaction. It has provided the funds and obviously had no involvement in or control over the provision of the labour and materials. It is bound by the setoff amount but, as noted above, may have recourse back against the seller.

[16] I make these comments to and further support to my opinion that any interpretation or implication of terms which would permit the buyer, as asserted here by Mansfield and Powers, to negate HFC's ability to be paid is a wholly unreasonable interpretation.

[17] In light of these comments the calculation should commence as at April 1st and go to October 31st at the contract interest rate.

Claim by Mansfield and Powers Against Floors Plus More

[18] In light of the finding that Mansfield and Powers may setoff the deficiency amount as against the HFC loan, I would find that the claim by them as against Floors Plus More should be dismissed. That is, to put it into simple terms, because they cannot claim for the same thing twice. Had Mansfield and Powers paid HFC as originally envisaged, then I believe they would still have the claim as against Floors Plus More. In effect, by asserting it in the defence, they have elected to proceed as against HFC and not as against Floors Plus More.

[19] I would however allow the costs amount of \$160.00, being the filing fee. There was no evidence about a service fee.

Costs

HFC is also entitled to costs in the amount of \$396.90 comprising a filing fee of \$160.00 and service fees of \$161.00 and \$75.90.

Disposition

In light of the above I order:

[29] That Floors Plus More pay to Joseph Leslie Mansfield and Judy Lynn Powers the amount of \$160.00.

[30] That Joseph Leslie Mansfield and Judy Lynn Powers pay to HFC the following:

Debt	\$11,472.97
Less	<u>2,500.00</u>
	\$ 8,972.97
Interest (19 months) (29.9% April 1, 2003 - October 31, 2004)	<u>4,247.95</u>
Debt	\$13,220.92

Costs	<u>396.90</u>
Total	\$13,617.82

DATED at Halifax, Halifax Regional Municipality, Nova Scotia on December , 2004.

Michael J. O'Hara
Adjudicator

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