

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Homeland Builders Inc. v. Halifax County Condominium #163, 2014 NSSM 54

Claim No: SCCH 430794

BETWEEN:

Name	<u>Homeland Builders Incorporated</u>	Claimant
Address	<u>67 Rockingstone Road</u> <u>Halifax, NS B3R 2E1</u>	
Phone	<u>(902) 477-7408</u>	

Name	<u>Halifax County Condominium Corporation # 163</u>	Defendant
Address	<u>5663 Inglis Street</u> <u>Halifax, NS B3H 1K2</u>	
Phone	<u>(902) 225-3860</u>	

Gerald Slade appeared on behalf of the Claimant.

Laura Fontaine and Shelley LeBrun appeared on behalf of the Defendant.

DECISION

This is a claim for breach of contract. The Defendant, Halifax County Condominium Corporation No. 163 (referred to as “the Condominium Corporation”) hired the Defendant Homeland Builders Incorporated (“Homeland”) to remove and replace a set of steps at 5663 Inglis Street, which is owned by the Defendant.

The dispute centres on the terms of the contract and the degree to which it has been completed. Mr. Slade, for the Claimant, contends that the contract is a cost plus materials contract. Thus, the Claimant should be paid on that basis. Ms. LeBrun and Ms. Fontaine, for the Defendant, submit that the steps are crooked and the work is of no value, since the work has not been completed and all the steps need to be removed. They also counterclaim for the return of their deposit of \$1000. The evidence does not support either position. In fact, I have found it just to award a more middle amount.

Aside from the interpretation of the evidence, the facts are not seriously in dispute.

The Condominium Corporation owns the property at 5663 Inglis Street. No evidence was given as to the age or value of the house but both parties described it as a "heritage property". Given its location in Halifax's South End, I accept their evidence in that regard.

The Defendant sought to replace the existing set of steps. The steps are wooden except for the last step which is a solid granite base. While it is not clear from the photographs in evidence, at least the last wooden step and the granite base are wider than the rest. This structure allowed for a handrail which curved out at the lower end, near the bottom of the steps. The guardrail posts were large and decorative. Undoubtedly, it was attractive when new, but in its state prior to renovation, it had clearly rotted to the point of disrepair.

Shelley LeBrun and Laura (Coulumbe) Fontaine, on behalf of the Condominium Corporation, sought several quotes to remove the existing steps and replace them. A written proposal was sent by the Claimant which was in turn signed and accepted by the Defendant.

The proposal states that Homeland will "supply all labour tools, material and supervision". The scope of the work is described as "Replace front landing, stairs, posts and spindles" and depending upon whether Homeland used the existing handrail, the cost was estimated at either \$3800 to use the existing handrail or \$4400 to replace it. Under the "Terms of Payment" it states:

"The cost for this work will be based on an average rate per man hour of \$38.00 plus 15% mark up on material and sub/ trades/suppliers provided by Homeland Builders."

Throughout his testimony and in much of his correspondence with the Condominium Corporation, Mr. Gerald Slade, on behalf of Homeland was adamant he contracted on a "cost plus materials" basis. However, I am unable to reach that conclusion based on the clear language of this proposal. I have concluded that this is a full quote to supply "all labour, tools and supervision". The cost would be either \$3800 or \$4400 depending upon whether the handrail was used. The basis is explained as \$38 per hour per employee plus costs. This is a "flat fee" contract. A guardrail was never installed. However, to do the job, it was necessary to remove the rail regardless of whether it was replaced or reinstalled. Thus, the maximum for the job before the amendments noted below was to be \$3800.

The Defendant accepted the contract and the work began. Once Mr. Slade began removing the steps, it was apparent to him that the handrail needed to be replaced. He removed the existing steps and began relocating the granite. Mr. Slade determined the materials needed to replace the steps to their original condition were no longer available. He had suggested a revision to the top deck of the steps and Ms. Fontaine indicated she would like it wider than the original to allow her to sit out on the step in a lawn chair. Once the agreement was signed, he indicated the guardrail would not be original and she agreed. While not stipulated anywhere, she wanted the replacement guardrail to be curved. The stipulation for a curved handrail was eventually conveyed to Mr. Slade, although it is not clear at which point in the transaction. I find that stipulation took place after the initial quote was accepted. As a result of these discussions, I find

the contract contained two additional conditions, namely, the deck was to be wider than originally planned and a curved guardrail was to be installed at the bottom. Although not a significant factor, new spindles were required for the rail as the old style was no longer available.

Darren Season is the owner of Executive Creations. They provided a quote to correct the slope in the step. He testified that he was originally approached by Mr. Slade to complete the work as he did not have the tools or experience to do the curved guardrail. He acknowledged the work Mr. Slade performed on the deck was "a good job". He testified to placing a level on the step and finding it was unlevel. He provided a quote of \$1200 to level the step and \$1800 for a new rail and post system.

The Defendant also tendered into evidence an estimate from Cathy Bennett of \$600 to redo the step construction and \$1000 to replace the rail.

Findings

While I have not referred to all of the evidence in this decision, I have considered all exhibits tendered and evidence provided by the witnesses and make the following findings:

- The contract was a flat fee, all-inclusive contract for the removal of the old steps and replacement with new steps. In the circumstances, I find the maximum amount of the initial contract before amendments was \$3800 + HST. There was no "cost plus" arrangement in the initial contract. As noted previously, Mr. Slade was required to remove the old rail and post and either replace it or reinstall it. He did not do either. For this reason and those noted below, I find the work was 75% complete.
- In their e-mail of July 18, 2014, Ms. LeBrun stated the following:

"I will have the stairs finished by Darrin, if he will do them for us and it looks like something similar to the house on the corner of Lucknow and Inglis with the plastic rails, like I mentioned in the first place, if things looked like they were going to go above the quote. We can probably get that done cheaply, since you did most of the work, and we will cut you a cheque for the balance of our budget, after we pay to get the stairs completed....".
- I agree with Ms. LeBrun that Mr. Slade did most of the work required under the contract. In my view, that portion was mostly but by no means fully complete. I estimate the work was 75% complete based on a contract of \$3800 plus HST. I award \$2850 + HST for that portion of the contract.
- Several items were proposed, namely, a wider main deck and the stipulation of the curved guardrail. In order to successfully add the curved railing, it logically requires larger steps at the bottom to facilitate a curved effect. In its previous state, the bottom posts were on

the outermost corners of the bottom step and granite base. In order to create a curve, I find it necessary to remove the granite and make a wider bottom step and base, each out of wood. I make this finding based on the appearance in the photographs. This requires additional labour and materials which were not part of the initial contract. The deck was made slightly larger, the rail was never completed. I do not award anything for not installing a curved rail. The installation or reinstallation of a railing was part of the original contract. However, I have taken that into account when finding the amount of the contract that has been completed. I award the Claimant \$300 for the portion of the extras he has completed.

- I find the step is not level and requires remedial work. In the absence of any objective evidence to the contrary from the Claimant, I accept the Bennett estimate as the more reasonable. I order the claim reduced by \$690 (\$600 + HST).
- The Defendant seeks the return of its deposit of \$1000. In order to do so, I would have had to find no liability on their part. That is not the result. I order the deposit applied against the amount owing.

Thus, I find the Claimant has established liability for the following:

Initial Contract: \$3800 x 75%	\$2850.00
Additional decking work	\$ 300.00
HST	\$ 472.50
Less: Remedial work	(\$ 690.00)
Less: Deposit	<u>(\$1000.00)</u>
Total Judgment	\$1932.50

As success is approximately equal, each party shall bear their own costs.

Summary

In summary, I have found the Defendant, Halifax County Condominium Corporation No. 163, liable to the Claimant, Homeland Builders Incorporated, for the amount of \$1932.50.

An order shall issue accordingly.

Dated at Halifax, NS,
on October 27, 2014.

Gregg W. Knudsen, Adjudicator

Original: Court File
Copy: Claimant(s)
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