

Claim No: 431100

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: The Water Shed v. Bellefontaine, 2014 NSSM 58

BETWEEN:

THE WATER SHED

Claimant

- and -

PAUL BELLEFONTAINE

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on October 21, 2014

Decision rendered on October 30, 2014

APPEARANCES

For the Claimant Stephen Burke, Owner

For the Defendant self-represented

BY THE COURT:

[1] This case concerns an outstanding account for work that the Claimant (a trade name used by Stephen Burke) did in supplying and installing a geothermal heating system in a home being built by the Defendant, who is a builder. The Defendant admits that most of what is claimed is owing. The difference of opinion is actually over less than one-tenth of the \$21,509.60 that the Claimant originally sought in his Claim.

[2] There was no formal written contract. In an email dated June 10, 2013 Mr. Burke quoted \$28,000 plus tax for a 5-zone system, with associated work such as wiring to thermostats. For an additional \$5,300 plus tax he agreed to drill the water well. These prices were accepted.

[3] Some months later, there were discussions about adding additional zones to the heating system. The Claimant quoted an additional \$2,750 plus tax to add four more zones, as an “extra.” Three of these zones were to be on the top floor, where the system would be using radiators rather than the in-floor radiant heat being used on the main floor and basement. One extra zone was being added on another level.

[4] The Defendant was critical of the Claimant for the fact that the heating needs on the top floor were not included in the original communication and quotes. The Claimant contends that he was following the very clear instructions of the Defendant, who provided him with a colour-coded drawing that specified exactly where the zones were to go. He says that in some homes, it is possible to do without a heat source on the upper floor where heat naturally rises. He

said he also considered it possible that the Defendant would simply add some supplementary electric heat, which would not have been part of his work.

[5] I accept the Claimant's position on this point. Furthermore, nothing that he did, or allegedly failed to do, made any difference in the long run.

[6] As matters turned out, the Defendant ended up doing some of the work and supplying some of the material for the job that makes up the extra \$2,750 quoted. Before considering what credits might be appropriate, it is important to quote from the Claimant's email of February 26, 2014, which sets out the extra work involved in creating additional zones:

"There are costs aside from adding radiators and running lines that I must consider here. All three [upstairs] zones need their own lines run. They all need their own solenoids, thermostats, etc. The header must be larger and more valving, etc. There is considerable added labour as well. So, all things considered, taking the in-floor out of the equation, the cost will be an extra \$2,750 plus tax."

[7] He then went on to specify the type of radiators he would use, and added some further details.

[8] One additional part of the work involved a change that required tearing out and re-routing one of the lines. The amount of the charge was originally disputed. The amount ultimately deemed acceptable was \$430 plus tax.

[9] All of this might have been straightforward enough. However, when it came time to do the work of installing the lines and radiators to the top floor, the Claimant was unavailable on the short notice provided by the Defendant, who was unprepared to wait a few days. Mr. Bellefontaine decided to do that work

himself, and to use some supplies that he either had in hand, or could acquire quickly. These supplies consisted of 2 baseboards, zone valves, caps and 3/4-inch pipe. The Claimant did not object, and said that credit would be given. The amount credited on the last invoice was \$456 for the supplied items.

[10] From the Claimant's point of view, the state of the account was something like this (his calculations differed in an immaterial amount):

	before HST	with HST
original quote for geothermal	\$28,000.00	\$32,200.00
Pump and well quote	\$5,300.00	\$6,095.00
Extra to change floor	\$430.00	\$494.50
Quote for extra zones	\$2,750.00	\$3,162.50
Further extra zone ¹	\$200.00	\$230.00
Credit materials	(\$456.00)	(\$456.00)
minus payments made	(\$17,730.00)	(\$20,389.50)
	\$18,494.00	\$21,336.50

[11] According to the Defendant, he is entitled to a credit of \$1,053.85 for supplies he purchased from a local supply company (Wolseley). He also seeks a credit of \$338.84 for other supplies bought from Northeast Equipment, and \$143.75 for a 250' roll of pipe bought from a company called Bird-Stairs. These credits would total \$1,536.44. However, the calculation that the Defendant puts

¹I am unconvinced that the \$200 claimed is legitimate, as it appears to be a duplication. I will disallow it in the final calculation.

forward does not specifically use these amounts as credits. The Defendant's reconciliation looks like this:

	before HST	with HST
original quote for geothermal	\$28,000.00	\$32,200.00
Pump and well	\$5,300.00	\$6,095.00
7 extra items (no HST accounted)	\$1,781.35	\$1,781.35
minus payments made	(\$17,730.00)	(\$20,389.50)
		\$19,686.85

[12] Adjusting the Claimant's calculation to eliminate the \$200.00 zone charge referenced above, results in this:

	before HST	with HST
original quote for geothermal	\$28,000.00	\$32,200.00
Pump and well quote	\$5,300.00	\$6,095.00
Extra to change floor	\$430.00	\$494.50
Quote for extra zones	\$2,750.00	\$3,162.50
Credit materials	(\$456.00)	(\$456.00)
minus payments made	(\$17,730.00)	(\$20,389.50)
	\$18,294.00	\$21,106.50

[13] The parties are accordingly \$1,419.65 apart in their positions - according to my adjusted calculations.

[14] The main differences are that the Claimant seeks \$2,750 plus HST for the additional zones, with a credit at his projected cost for the items supplied by the Defendant. The Defendant basically says that there was no deal for the additional zones, and only credits the Claimant with a certain amount for extras that he actually performed.

[15] In my view, it is not fair for the Defendant simply to say that the quote for the additional zones is void, simply because he supplied some of the items. As the Defendant pointed out in his original quote, there were changes to the system generally mandated by the expansion of the system. The Defendant does not seem to have credited any of that.

[16] Also, the Defendant has not satisfied me that the parts he purchased were exactly what the Claimant would have supplied, or that his cost would have been the same for those items. There does seem to be some validity to his argument that he needed 250 feet of tubing, while the Claimant only credited \$40.00 for 100 feet. I would increase the credit to \$125.00 plus HST. This results in a difference of \$80.00 plus HST. As such, I allow the Claimant's claim at \$21,106.50 minus \$92.00, for a total of \$21,014.50.

[17] The Claimant is entitled to interest. The Defendant did not pay even what he believed he owed, in a timely manner. Giving the Defendant the benefit of the doubt as to when he received funds from the sale of the house, I would allow interest for four months at the statutory rate of 4%, namely \$280.19. The Claimant is also entitled to his costs of \$193.55.

Eric K. Slone, Adjudicator