

Claim No: 430897

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Yuille Enterprises Ltd. v. Optionsplus Property Services Inc., 2014 NSSM 63

BETWEEN:

YUILLE ENTERPRISES LIMITED

Claimant

- and -

OPTIONSPLUS PROPERTY SERVICES INC.

Defendant

REASONS FOR DECISION

BEFORE

Eric K. Slone, Adjudicator

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

Decision rendered on October 27, 2014

APPEARANCES

For the Claimant Bob Yuille, Owner

For the Defendant Shane Bolger, General manager

BY THE COURT:

[1] This case concerns two unpaid bills for car repair services. The total alleged to be owing is \$3,711.12. Both accounts are from approximately two years ago.

[2] The Defendant's General Manager, Mr. Bolger, denies that these amounts are legitimately owed, and also complains that he had no prior notice that these amounts were being claimed since he had heard nothing until recently when served with the Claim.

[3] The two accounts involve different issues, from the standpoint of the Defendant. The earlier account is dated September 20, 2012, and was for work done to repair damage done in a car accident. The issue is whether or not the Defendant is liable for the amount over and above what was paid by his insurance.

[4] The Claimant knew that there was insurance involved, but had no way of knowing whether insurance would cover the whole amount. The total account rendered was \$3,551.79. Somewhat randomly, it appears, the insurer paid only \$2,029.81, leaving \$1,521.98 unpaid. It would be speculation to say that this was because of a deductible in the policy, but this likely was a part of it, as Mr. Bolger himself admitted.

[5] Mr. Bolger says that he had no idea that there was any amount owing on this bill until he was served with the claim several weeks ago. Even if that is

true, he had not yet managed to contact his insurer to determine why the entire bill, or more of it, was not covered.

[6] There is no complaint about the bill itself. Whether or not the insurer is liable for more, the contract was still between the Claimant and Defendant and this amount is owing.

[7] The second bill is dated several months later and concerns a \$6,901.64 job to replace the engine in the same vehicle. The Defendant says that there was an agreement to do the work for a flat fee of \$5,000.00. The Claimant denies that there was such an agreement.

[8] Both parties describe a meeting where there was some negotiation about price. The evidence of Mr. Bolger was that he said he only had \$5,000.00 to spend, and that the Claimant agreed to take this amount. Bob Yuille, the owner of the Claimant company, testified that he agreed to lower the labour rate significantly if the Defendant was prepared to wait until after the December holidays to have the work done. He says that he would never have agreed to take \$5,000.00 because the cost of the parts alone would have made up \$3,162.50 of that amount, and the balance would not have been enough to cover the many hours of labour involved in this big a job.

[9] Mr. Bolger was permitted to take his vehicle paying only the \$5,000.00, and while he knew that the greater amount was being claimed, says that he never heard anything further about it for about a year and a half. The two witnesses for the Claimant testified that the Defendant was sent reminders on a regular basis. Bob Yuille testified that they did not pursue this more aggressively

because he hoped to get regular business from the Defendant company, something that does not appear to have happened.

[10] On balance, I believe the Claimant version of events. It would be unjust to hold the Claimant to a flat account, without some corroboration, such as a written quote. Given the amount of work involved, it does not ring true that the Claimant would have agreed to take that amount, inclusive of tax, and essentially undertake a big job at a fraction of the labour rate.

[11] I am also deeply sceptical of the claim by Mr. Bolger that he never received reminder invoices. The documents exist, and the address was correct. However, even if this were true it does not change the fact that the work was done, and the amount charged was reasonable.

[12] The Claimant will have judgment for \$3,711.12 plus costs of \$96.80. Although interest was not asked for, I would have disallowed it because the Claimant delayed this long in attempting to collect these accounts.

Eric K. Slone, Adjudicator