

Claim No: 216710

Date:20040422

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

**Cite as: Faddoul v. Heighton, 2004 NSSM 19**

**BETWEEN:**

Name George Faddoul Claimant

Name Bill Heighton Defendant

**Revised Decision:** The text of the original decision has been revised to remove personal identifying information of the parties on August 8, 2007.

**DECISION**

- (1) This proceeding was heard on April 13, 2004.
- (2) The Claimant, George Faddoul, claims the sum of \$225.00 against the Defendant, Bill Heighton.
- (3) The Defendant Counterclaims against the Claimant, George Faddoul, for the sum of \$100.00.
- (4) The Claim is in negligence. According to the Claimant, the Defendant, who was contracted to perform an appraisal of the Claimant's boat for purposes of a matrimonial proceeding, caused the boat cover to tear and, as a result of his negligence, the Claimant has suffered damages. He claims the sum of \$225.00 or the delivery of a new boat cover.
- (5) The Defendant, in his Counterclaim, states that the damage to the boat cover was a direct result of the Claimant's negligence in allowing snow and ice to accumulate on the cover and that the Claim was only brought about, according to the Defendant, as a retaliatory gesture after the Defendant refused to complete a biased and incomplete appraisal of the boat, allegedly at the request of the Claimant.
- (6) The amount of the Counterclaim, namely \$100.00, represents remuneration for the Defendant in conducting the appraisal of the boat.

- (7) Both parties provided evidence in this proceeding and, as well, the Claimant called Marlene Patterson as a witness. Ms. Patterson is an employee of the Claimant and a neighbor of the Defendant. It was Ms. Patterson who referred the Defendant to the Claimant.
- (8) The Claimant also submitted a CD Rom with the consent of the Defendant, the Defendant having had an opportunity to review same. The CD Rom is a copy of surveillance tapes taken on the Defendant's premises on the date in question.
- (9) Having heard the evidence of the parties and after reviewing the CD Rom of the security tapes, I am satisfied that the Claimant has proven that the Defendant was negligent in removing the boat cover.
- (10) While it is not entirely clear from the security tapes, I am satisfied based on the evidence and find as a fact that while removing the boat cover, the Defendant, Bill Heighton, caused the boat cover to become caught on an area near the windshield of the boat and pulled on the cover, thus causing it to rip. While I am satisfied that the Defendant was not physically able to climb into the boat, he could have requested assistance from the Claimant or some other person to remove the boat cover. By proceeding in the manner that he did, he failed to use reasonable care and, as a result, the boat cover was damaged.
- (11) While it is true that the accumulation of ice and snow on the cover may have contributed to the tear, nevertheless, I am satisfied that the Defendant's failure to request assistance in the removal of the boat cover contributed directly to the damage that was caused.
- (12) With respect to the quantum of damages, the Claimant seeks the value of a new boat cover. I am not prepared to award the value of a new boat cover. The measure of damages should place the Claimant in the same position that he would have been in had the negligence not occurred.
- (13) In this case, the Defendant, who is a qualified appraiser, testified that, if properly maintained, a boat cover would depreciate by approximately 10% each year down to 50%. Boat covers usually last eight to ten years. The boat cover in this case was two years old, and I find, therefore, that the value of the boat cover at the time was \$180.00. I award this amount to the Claimant.
- (14) With respect to the Counterclaim, I find that the Defendant was hired to conduct an appraisal of the Claimant's boat and its equipment and accessories and that the Claimant required this

service as part of matrimonial proceedings. While there was a dispute concerning the nature of the work which the Defendant was to perform, which dispute led to the Defendant refusing to complete the appraisal and declining the Claimant's February 21, 2004, cheque for \$100.00 for services rendered, I am satisfied that although the cheque was declined, the Defendant is not estopped from claiming on a quantum meruit basis for services performed. His reasons for declining the cheque had to do with the nature of the work which he perceived the Claimant was asking him to do and which he was not prepared to do.

- (15) My impression is that for the price quoted, the Defendant was prepared to do a straight forward appraisal and nothing further.
- (16) I find that the Defendant did all the work necessary to complete the appraisal with the exception of summarizing his findings and inserting the amount into the Vehicle Evaluation Report. The Vehicle Evaluation Report was tendered as an exhibit in this case, lacking only the actual amount of the appraisal.
- (17) I find in these circumstances that the Defendant shall be entitled to claim 3/4 of his fee or \$75.00.
- (18) I will set off the two claims such that the Defendant owes to the Claimant the sum of \$105.00.
- (19) According to the evidence, the cost of filing the Claim was \$75.00 and the cost of filing the Counterclaim was \$50.00. Since both parties have been successful, I will award the Claimant the difference in the two amounts or \$25.00 filing costs.

Dated at Dartmouth, Nova Scotia,  
on April 22, 2004.

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Patrick L. Casey, Q.C., Adjudicator

Original	Court File
Copy	Claimant(s)
Copy	Defendant(s)



